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DIVISION II

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STATE OF WASHINGTON

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

DEPUTY

In re Pers. Restraint of

) No. 56791-1-II

) **REPLY TO STATE'S RESPONSE**

DARYL ROGERS II

Petitioner.

INTRODUCTION

COMES NOW, Petitioner Daryl Rogers, acting pro se with a reply to Respondent State of Washington's response, received February 28, 2023.

FACTS

On March 12, 2022, Petitioner filed a Motion for Relief from Judgment pursuant to CrR 7.8. This was transferred to the Court as personal restraint petition on March 18, 2022. On May 6, 2022, Petitioner moved to voluntarily withdraw the personal restraint petition. On May 10, 2022, this Court denied the voluntarily withdraw of the personal restraint petition electing to put the petition on stay until November 4, 2022. This was done to give the Petitioner an opportunity to bring forth a supplemental petition that meets the time bar and contains all relevant issues (Exhibit A). On November 4, 2022, Petitioner filed the current 7 issue supplemental petition in this case. On December 5, 2022, this Court ordered the Respondent State of Washington to respond to the petition in accordance with RAP 16.9 by February 3, 2023 (Exhibit B).

1 Respondent State of Washington failed to meet its February 3, 2023, deadline. On February 8,
2 2023, Washington State Court of Appeals Division Two clerk issued warning to Respondent
3 State of Washington to respond by February 21, 2023, Respondent State of Washington filed its
4 response on February 21, 2023, and Petitioner receives this response on February 28, 2023.

6 ARGUMENT

7 1) State's Response

8 Respondent State of Washington has failed to actually respond to the issues presented in
9 the supplemental petition. Petitioner filed a 7 issue supplemental personal restraint petition
10 that included challenges of a) Offender Score under i. the washout provision; ii. the State's
11 failure to prove criminal history; and iii. failure to conduct a proper same criminal conduct
12 analysis, b) Brady Violation, c) Aggravating Factors i. RCW 9.94A.535(3)(n) and ii. RCW
13 9.94A.535(3)(g), and d) Due Process/Lack of Jurisdiction. The Respondent has only touched
14 on the issue of same criminal conduct but has not addressed whether there was a failure to
15 conduct a proper same criminal conduct analysis. Every other issue presented the
16 Respondent has failed to respond to, even though this Court ordered the Respondent to either
17 argue or concede to each issue under RAP 16.9 (Exhibit B). RAP 16.9, which governs
18 responses to a personal restraint petition, states in relevant part "The response must answer
19 the allegations in the petition.... Respondent should also identify in the response all material
20 disputed questions of fact." RAP 16.9(a). The Washington State Supreme Court confirmed
21 "The State's response must answer the allegations of the petition and identify all material
22 disputed questions of fact. RAP 16.9. In order to define disputed questions of fact, the state
23 must meet the petitioner's evidence with its own competent evidence." In re Pers. Restraint

1 of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). The Washington State Court of
2 Appeals Division Two would echo this statement in In re Pers. Restraint of Gasteazoro-
3 Paniagua, stating "If the petitioner makes a prima facie showing of prejudicial error, we then
4 examine the State's response, which must 'answer the allegations of the petition and identify
5 all material disputed questions of fact.' To identify disputed questions of fact, the State must
6 meet the petitioner's evidence with its own competent evidence." In re Pers. Restraint of
7 Gasteazoro-Paniagua, 2016 Wash. App. LEXIS 2773, 2016 WL 6756224 (Wash. Ct. App.
8 November 15, 2016) (quoting In re Pers. Restraint of Monschke, 160 Wn. App. 479, 489,
9 251 P.3d 884 (2010)). The Respondent had the opportunity and was actually required by
10 RAP 16.9(a) and the Perfection Letter to controvert the claims in the petition or any part
11 thereof but chose not to. The Respondent's failure to address the issues presented should be
12 viewed by this Court as a concession on any issue not addressed. If any issue not addressed
13 is not viewed as a concession by this Court in light of RAP 16.9(a) and the Perfection Letter,
14 at the very least the Respondent should be prevented from making any future arguments to
15 these issues as the Respondent has had ample time and opportunity to respond to these issues
16 and has chosen not to contest the issues or the facts presented. The Respondents failure to
17 address the issues presented should be viewed by this Court as a concession on any issue not
18 addressed./////And if it is not viewed as a concession on any issue not addressed at the very
19 least the Respondent should be prevented from making any future arguments to these issues
20 as the Respondent has had ample time and opportunity to respond to these issues and chose
21 not to.

22 2) Offender Score

23 a. Washout Provision

1 Petitioner still contends that his juvenile class c conviction for attempted
2 residential burglary on May 23, 2007 washed out in accordance with RCW 9.94A.525(2)(c),
3 which states in relevant part "class C prior felony convictions other than sex offenses shall
4 not be included in the offender score if, since the last date of release from confinement
5 (including full-time residential treatment) pursuant to a felony conviction, if any, or entry of
6 judgment and sentence, the offender had spent five consecutive years in the community
7 without committing any crime that subsequently results in a conviction." RCW
8 9.94A.525(2)(c). Petitioner's juvenile class c conviction for attempted residential burglary
9 occurred on May 23, 2007 (Exhibit C). Petitioner's last date of release from confinement was
10 June 22, 2007. Petitioner's current conviction occurred on November 2, 2018, more than 11
11 years after Petitioner's release from confinement for attempted residential burglary (Exhibit
12 C). The Washington State Supreme Court stated "[T]he statute is split into two separate
13 classes: a trigger clause, 'which identifies the beginning of the five-year [washout] period,'
14 and a continuity/interruption clause, 'which sets forth the substantive requirements an
15 offender must satisfy during the five-year period.' Accordingly, the plain language of RCW
16 9.94A.525(2)(c) provides that the washout period on certain prior convictions will trigger
17 when five years have elapsed between the last date of release from confinement pursuant to
18 a felony conviction and a subsequent conviction." State v. Schwartz, 194 Wn.2d 432, 450
19 P.3d 141 (2019) (quoting State v. Ervin, 169 Wn.2d 815, 821, 239 P.3d 354 (2010)). The
20 washout trigger clause began for Petitioner's juvenile class c conviction for attempted
21 residential burglary on June 22, 2007, Petitioner's last date of release from confinement. The
22 Petitioner subsequently met the substantive requirements an offender must satisfy during the

1 five-year period contained within the washout continuity/interruption clause until November
2 2, 2018, more than double the five-year period requirement.

3 Because the Petitioner met the requirements necessary for his juvenile class c conviction
4 for attempted residential burglary to washout, it cannot be used in Petitioner's offender score.
5 Therefore, Petitioner requests the sentence be vacated and the case remanded for correction of
6 the Petitioner's offender score without the juvenile class c conviction for attempted residential
7 burglary and resentencing.

8 b. Criminal History

9 Petitioner still contends the State did not meet its burden in proving the 2005
10 burglary in the first degree (case no. 05800471-7) as part of Petitioner's criminal
11 history (Exhibit C). It is the burden of the State to prove criminal history by more
12 than a prosecutor's unsupported summary. And a defendant's failure to object to an
13 incorrect calculation of an offender score is not sufficient. *State v. Cate*, 194 Wn.2d
14 909, 912-13, 453 P.3d 990 (2019) (citing *State v. Hunley*, 175 Wn.2d 901, 287 P.3d
15 584 (2012)). Additionally, defendants have no responsibility to present evidence of
16 criminal history. *State v. Lopez*, 147 Wn.2d 515, 521, 55 P.3d 609 (2002).

17 In *Hunley*, the Washington State Supreme Court stated "'The best evidence of a
18 prior conviction is a certified copy of the judgment.'" *Hunley*, 175 Wn.2d at 910
19 (quoting *State v. Ford*, 137 Wn.2d 472, 480, 973 P.2d 452 (1999)). In this particular
20 case the State did present a certified copy of the 2005 burglary in the first degree
21 (case no. 05800471-7) judgment to the trial court during the testimony of the State's
22 identification specialist Nancy Druckenmiller, of the Clark County Sheriff's Office
23 (Exhibit M). The State presented Ms. Druckenmiller to match Petitioner's

1 fingerprints to the certified copy of the 2005 burglary in the first degree (case no.
2 05800471-7) judgment and sentence. In a question and answer with the prosecuting
3 attorney Ms. Druckenmiller testified to being unable to match the Petitioner to the
4 2005 burglary in the first degree (case no. 05800471-7) judgment and sentence:

5 Q: (By Mr. Hayes) So as part of this case, did you compare those two sets of
6 booking prints of Daryl Craig Rogers to two different judgment and sentences?

7 A: Yes.

8 Q: First one I'm going to hand up, pertains to case number 05800471-7, is this one of
9 the judgments and sentences you reviewed?

10 A: Yes, it is.

11 Q: Would it be fair to say that, due to the poor quality of the prints, you were not
12 able to make any comparison as to the prints on that judgment and sentence?

13 A: That is correct. 6 Verbatim Report Proceedings (VRP) at 795+ (Exhibit M)

14 The testimony of Ms. Druckenmiller, presented by the State, does not meet the
15 burden of proving the 2005 burglary in the first degree (case no. 05800471-7)
16 judgment is a part of the Petitioner's criminal history by a preponderance of the
17 evidence. In actuality, based on the testimony of Ms. Druckenmiller the State is
18 effectively unable to prove who the defendant of the 2005 burglary in the first degree
19 (case no. 05800471-7) judgment is. This is because a certified copy of the judgment
20 is the best evidence of a prior conviction. Hunley, 175 Wn.2d at 910. Yet, the poor
21 quality of the prints, makes it impossible to make any comparison to the prints on the
22 judgment and sentence of the 2005 burglary in the first degree (case no. 05800471-7)
23 conviction. Any other evidence that would prove who the defendant of this 2005

1 burglary in the first degree (case no. 05800471-7) conviction is would not only be
2 secondary to the "certified copy of the judgment," any other evidence could only be
3 verified by the "certified copy of the judgment" of the 2005 burglary in the first
4 degree (case no. 05800471-7) conviction.

5 Since the State has failed to meet its burden of proving the 2005 burglary in the
6 first degree (case no. 05800471-7) conviction is a part of the Petitioner's criminal
7 history by a preponderance of the evidence, Petitioner requests the sentence be
8 vacated. The Washington State Supreme Court has "vacated sentences on multiple
9 occasions where the state failed to provide sufficient evidence of prior convictions."
10 Hunley, 175 Wn.2d at 911(citing State v. Mendoza, 165 Wn.2d 918, 928-29, 205
11 P.3d 113 (2009)) See also Lopez, 147 Wn.2d 523 Ford, 137 Wn.2d 482.

12 c. Same Criminal Conduct Analysis

13 Petitioner still contends the trial court erred in not conducting a same criminal
14 conduct analysis under RCW 9.94A.589(1)(a) as it pertains to Petitioner's 3
15 convictions for rape of a child in the first degree. The trial conducted a double
16 jeopardy analysis (Exhibit D), but never did a same criminal conduct analysis. The
17 two analyses, though similar, are distinctly separate. "A double jeopardy violation
18 claim is distinct from a 'same criminal conduct' claim and requires a separate
19 analysis. A double jeopardy violation focuses on the allowable unit of prosecution
20 and involves the charging and trial stages. The 'same criminal conduct' claim
21 involves the sentencing phase and focuses instead on the defendant's criminal intent,
22 whether the crimes were committed at the same time and at the same place, and
23 whether they involved the same victim." State v. French, 157 Wn.2d 593, 611-12,

1 141 P.3d 54 (2006) (citing State v. Tili, 139 Wn.2d 107, 119 n.5, 985 P.2d 365
2 (1999). "Even though they may be separate, albeit similar, analyses, a determination
3 that a conviction does not violate double jeopardy does not automatically mean that
4 it is not the same criminal conduct." State v. Chenoweth, 185 Wn.2d 218, 222, 370
5 P.3d 6 (2016) (citing Tili, 139 Wn.2d at 124 (finding defendant's three first degree
6 rape convictions did not violate double jeopardy but were part of the same criminal
7 conduct, the court held that Tili's criminal intent to commit several rapes did not
8 change from one act of penetration to the next)).

9 In the Petitioner's case the trial courts double jeopardy analysis identifies the 3 acts
10 constituting the four convictions. This is the unit of prosecution portion of the double jeopardy
11 analysis. On the other hand, the same criminal conduct analysis, which the trial court failed to
12 conduct, asks 1. Whether the acts constituting the convictions have the same criminal intent or
13 were in furtherance of the same objective criminal intent? 2. Whether the acts constituting the
14 convictions happen at the same time and place? 3. Whether the acts constituting the convictions
15 have the same victim? The double jeopardy analysis conducted by the trial court was not a
16 determination of these questions and therefore cannot be considered a same criminal conduct
17 analysis. Since the trial court failed to conduct a proper same criminal conduct analysis of
18 Petitioner's convictions, Petitioner requests the case be remanded for a hearing to properly
19 determine the issue of same criminal conduct.

20 3) Brady Violation

21 a. Brady Standard/Requirements

22 Petitioner contends he does not have to show that the disclosure of the evidence at issue
23 in this case would have resulted in an acquittal to show the exculpatory evidence was material,

1 since under Brady the standard is not about the sufficiency of the evidence. "One of the most
2 important characteristics is that it is 'not a sufficiency of evidence test.' Id. Thus a 'showing of
3 materiality does not require demonstration by a preponderance that disclosure of the supposed
4 evidence would have resulted ultimately in the defendant's acquittal.' Id. The question 'is not
5 whether the defendant would more likely than not have received a different verdict with the
6 evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a
7 verdict worthy of confidence.' Id." In re Pers. Restraint of Stenson, 174 Wn.2d 474, 487, 276
8 P.3d 286 (2012) (quoting Kyles v. Whitley, 514 U.S. 419, 434, 115 S. Ct. 1555, 131 L.Ed. 2d
9 490 (1995) (relying on U.S. v. Bagley, 473 U.S. 667, 675, 105 S. Ct. 3375, 87 L.Ed.2d 481
10 (1985))).

11 In Stenson, the Washington State Supreme Court ruled that to prove materiality a
12 petitioner must show that it's reasonably probable that if the evidence was disclosed it would
13 have resulted in a different outcome. Stating "[w]hat then, must a petitioner show to prove
14 materiality? He or she must show 'there is a reasonable probability that, had the evidence been
15 disclosed to the defense, the result of the proceeding would have been different.'" Stenson, 174
16 Wn.2d at 487 (alterations added) (quoting Bagley, 473 U.S. at 682 (opinion of Blackmun, J.) id
17 at 685 (White, J., concurring in part, concurring in judgment)). The Stenson court would further
18 state "[A] 'reasonable probability' of a different result is accordingly shown when the
19 government's evidentiary suppression 'undermines confidence in the outcome of the trial.' One
20 does not show a Brady violation by demonstrating that some of the inculpatory evidence should
21 have been excluded, but rather by showing that the favorable evidence could reasonably be taken
22 to put the whole case in a different light." Stenson, 174 Wn.2d at 487 (alterations added)
23 (quoting Bagley, 473 U.S. at 678). Id.

1 "Instead, courts are directed to look to whether 'the withheld evidence would have altered
2 at least one juror's assessment' of the overall case." In re Pers. Restraint of Mulamba, 199 Wn.2d
3 488, 499, 508 P.3d 645 (2022) (quoting Cone v. Bell, 556 U.S. 449, 452, 129 S. Ct. 1769, 173 L.
4 Ed. 2d 701 (2009)). In this case Prosecutor Hayes, the prosecuting attorney withheld
5 documentary evidence of a 2010 police incident that would have given an exact date that
6 Petitioner no longer had contact with the complaining witness and her family. This would have
7 proved that the Petitioner did not have contact with the complaining witness and her family for
8 an overwhelming majority of the charging period, in fact it would have proved the Petitioner
9 only had contact with the complaining witness and her family for no more than 6 weeks instead
10 of the 3-12 months stated by prosecution witnesses. This coupled with the schedules of everyone
11 in the home (8 total people) and the limited amount of space in the home (1240sqft home with
12 only 760sqft of living space) significantly limited the possibility that these crimes were
13 committed. The defense made multiple requests for documentation of this 2010 police incident
14 (Exhibits N, O and P), but this documentation was never disclosed to the defense. On
15 Wednesday, October 31, 2010 at 4:43pm, after both the prosecution and defense closed their
16 case in chief, Prosecutor Hayes sent an email to Public Defender Staples, Petitioner defense
17 attorney, acknowledging that Detective Hernandez, the lead detective on the case, had
18 documentation of the 2010 police incident in 2016, but is since not sure of where this
19 documentary evidence is. (Exhibit Q). Had the evidence identifying the exact date of the 2010
20 police incident been properly disclosed, the defense could have used it for impeachment
21 purposes during the testimony of both the complaining witness and Ms. Poindexter and it would
22 serve to contradict the timeframe put forth by the State, impeach the credibility of the State's

1 witnesses, and undermine the State's argument as to the Petitioner's opportunity to commit these
2 crimes.

3 "Under 'reasonable probability,' a Brady violation does not require a finding beyond a
4 reasonable doubt of a changed outcome if the withheld evidence had been released Brady
5 requires only a lack of confidence in that outcome." Mulamba, 199 Wn.2d at 498. The Stenson
6 Court put it this way, "[t]he question here is not whether [Petitioner] has proved his innocence
7 that is not his burden under Brady. As the United States Supreme Court said in Kyles, 'the
8 question is not whether the State would have had a case to go to the jury if it had disclosed the
9 favorable evidence, but whether we can be confident that the jury's verdict would have been the
10 same.'" Stenson, 174 Wn.2d at 493 (alterations added)(quoting Kyles, 514 U.S. at 453). Based on
11 this ruling in Stenson, Brady and its progeny, requires this Court to consider whether one juror
12 might have had reasonable doubt that the Petitioner was guilty if (1) the State had never
13 introduced evidence that the complaining witness and her family lived in the home from either
14 March 10, 2010 or April 10, 2010 until before Fall 2010 3 VRP at 333-34 (Exhibit J) (2) the
15 defense team properly impeached the credibility of the complaining witness and Ms. Poindexter
16 and showed the limited amount of time the complaining witness and her family lived in the home
17 and (3) the defense team had the benefit of the undisclosed evidence to create a persuasive
18 defense theory of the case. Additionally, disclosure would have raised opportunities for the
19 defense to attack the thoroughness and even the good faith of the investigation. Because the
20 differences in the timeframes put forth by the State and the defense and how these timeframes
21 would be considered with all other evidence, there is reason to believe that at least one juror
22 would have had reasonable doubt had this evidence been available to be considered. Since,
23 "[c]onfidence is undermined if even 'one juror might have had reasonable doubt' as to the

1 [Petitioner's] guilt if the jury had heard the undisclosed evidence." Mulamba, 199 Wn.2d at 504
2 (alterations added) (quoting Stenson, 174 Wn.2d at 493).

3
4 i. Aggravating Factor

5 Brady material applies to evidence affecting punishment as it does to evidence affecting
6 guilt. "[T]he suppression by the prosecution of evidence favorable to an accused violates due
7 process where the evidence is material either to guilt or to punishment" Kyles, 514 U.S. 419.
8 (alterations added) (citing Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215
9 (1965)). Since aggravating factors affects the punishment, a defendant is facing, Brady material
10 applies to aggravating factors. In this case petitioner was found guilty of RCW 9.94A.535(3)(g)
11 as an aggravating factor. This states that "The offense was part of an ongoing pattern of sexual
12 abuse of the same victim under the age of eighteen years manifested by multiple incidents over a
13 prolonged period of time." RCW 9.94A.535(3)(g). The evidence at issue in this Brady violation
14 has a bearing on the determination of Petitioner's guilt under RCW 9.94A.535(3)(g) as it
15 significantly shortens the length of time these events were to have occurred and in doing so the
16 number of incidents that were to have occurred.

17 The complaining witness states that the complaining witness and her family lived with
18 the Petitioner for a long time. 3 VRP at 277-78, 288. And Ms. Poindexter states that the
19 complaining witness and her family lived with the Petitioner for a few months, beginning March
20 10, 2010 or April 10, 2010 and leaving before fall 3 VRP at 333-34, after June 30, 2010. 2 VRP
21 at 193 (Exhibit I). The documentation of the 2010 police incident that the prosecutor
22 acknowledges was in the possession of Detective Hernandez while investigating these crimes in
23 2016, would have negated both of these statements and proven that the complaining witness the

1 complaining witness and her family lived with the Petitioner for a matter of weeks before the
2 2010 police incident occurred. And since this aggravating factor is in regards to the length of
3 time and number of incidents that was to have occurred, the evidence at issue is material to
4 determining this aggravating factor.

5 Evidence that would prove the exact date the complaining witness and her family left the
6 home, is material. That evidence is material because it proves that "multiple incidents" did not
7 occur "over a prolonged period of time." This is reason to believe that at least one juror would
8 have had reasonable doubt as to the Petitioners guilt of committing these crimes as "part of an
9 ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by
10 multiple incidents over a prolonged period of time" under RCW 9.94A.535(3)(g) as an
11 aggravating factor, had this evidence been available to be considered.

12 RCW 9.94A.535(3)(g) weighs not only as an aggravating factor, but also on the
13 determination of guilt of the principle crimes in this particular case. RCW 9.94A.535(3)(g) is
14 uniquely linked to the principle crimes in this case because it requires the showing of "multiple
15 incidents over a prolonged period of time." If there is a determination that "multiple incidents"
16 did not occur "over a prolonged period of time," it brings into question whether or not the
17 number of principle crimes alleged to have occurred actually happened, or if any of the principle
18 crimes actually happened at all. By this RCW 9.94A.535(3)(g) is intricately intertwined with the
19 principle crimes in this particular case. And any Brady material as it relates to the determination
20 of guilt under RCW 9.94A.535(3)(g) an aggravating factor affecting punishment, is also Brady
21 material as it relates to the principle crimes in this particular case.

22 b. Prosecution Witness Testimony

1 The evidence at issue impeaches the testimony of the only two prosecution witnesses
2 with firsthand knowledge of the time in question, the complaining witness and Ms. Poindexter.

3 i. Complaining Witness's Testimony

4 The complaining witness's testimony regarding the timeframe when she initially
5 recalled it was that these events occurred for a year. 3 VRP at 277-78. THE
6 COMPLAINING WITNESS further testified that although she is not sure of exactly how
7 long these events occurred, that it was a long time. 3 VRP at 288. These statements even
8 if not giving an exact timeframe would lead any reasonable person to believe these events
9 occurred over an extended period of time. To further this idea the charging period in the
10 Court's Instructions To The Jury for each of the convictions was "on or about or between
11 January 1, 2010 and December 31, 2010." (Exhibit E). As the Court's Instructions To The
12 Jury must be considered during deliberations to reach a verdict (Exhibit E), the charging
13 period in the Court's Instructions To The Jury would only lend itself to corroborating he
14 complaining witness's testimony that the events occurred over a long time, even if not for
15 an exact year, without documentation proving otherwise. Therefore, documentation of an
16 event that would impeach the complaining witness's testimony and contradict these
17 statements are both favorable to the Petitioner and material to this case.

18 ii. Poindexter's Testimony

19 Petitioner contends in his petition that the evidence at issue in this Brady violation would
20 also impeach the testimony of prosecution witness Amanda Poindexter's timeframe of the events
21 in question. Ms. Poindexter's timeframe was that her and her children, including the complaining
22 witness, lived in the home for a "few months," arriving on March 10, 2010 or April 10, 2010 and
23 leaving before fall, after the June birthday of the complaining witness 3 VRP at 333-34, which is

1 June 30 2 VRP at 193. This would mean Ms. Poindexter and her children left the home sometime
2 in July or August of 2010.

3 Impeaching Brady information is not limited to applying to the complaining witness.
4 Especially if, as the Ruling suggests, " The complaining witness offered no such timeline in her
5 testimony." Based on all remaining testimony the only timeframe the prosecution put forth and
6 relies on comes during the testimony of Ms. Poindexter, which is the only testimony that
7 suggests the Petitioner had the opportunity to commit these crimes. This would then make
8 evidence that would contradict Ms. Poindexter's timeframe material to the case. For example, in
9 Benn the court ruled that information about a prosecution witness was deemed material when the
10 witness's testimony was the source of most of the support for the defendant's motive. The
11 evidence of the witness's history was considered material because of the witness's overwhelming
12 importance to the prosecution's overall case. (Benn v. Lambert, 283 F.3d 1040, 1056 (9th Cir.
13 2002). Therefore, the evidence at issue in this current Brady violation is impeaching because it
14 contradicts the timeframe testimony of the only prosecuting witness that gave any testimony of a
15 timeframe and this timeframe testimony given by the prosecuting witness is the only testimony
16 giving the Petitioner the opportunity to commit these crimes. Making this witness's timeframe
17 testimony critical to the prosecution's overall theory of the case and is not corroborated by any
18 other witnesses or evidence.

19 Whether as Petitioner has stated, the complaining witness's testimony offers a time frame
20 or the complaining witness did not offer a timeframe and the prosecution is relying solely on the
21 timeframe put forth in Ms. Poindexter's testimony, the evidence at issue is favorable to the
22 Petitioner, impeaches the State's witness, and is material to the case.

23 c. Defense Witness Testimony

1 The testimony of all defense witnesses were the testimony of individuals with firsthand
2 knowledge of the time in question. Each of which stated the complaining witness and her family
3 lives with the Petitioner and his family for one and half to two months. While all other
4 references to defense witness testimony is second hand testimony.

5 First, during the testimony of Shatyra Rogers, when asked how long Ms. Poindexter
6 (Amanda) and her family stayed at the home, Ms. Rogers stated "I would say no more than two
7 months." 4 VRP at 504 (Exhibit K). When cross-examined, Ms. Rogers was asked by the
8 prosecutor "And you think that Amanda and her kids came to stay with you all for about two to
9 three months?" Ms. Rogers clarified "Yes. Well, probably two, but yes." 4 VRP at 524.

10 Second, Demetrius Rogers was asked when Ms. Poindexter and her children moved into
11 the home? Mr. Rogers replied, "I can't say the exact date for sure, but I do recall that it was after
12 my birthday in 2010, and my birthday is at the end of March, so I would say apparently April's
13 time frame." 4 VRP at 540-41. Moments later Mr. Rogers was asked how long Ms. Poindexter
14 and her children lived in the home? To this he responded "Couldn't have been more than a couple
15 months at most. I do remember them being--I can't say for sure when they left, but I feel like it
16 was before the summer started. Or I--I know the weather was nice, but it wasn't, like, mid-
17 summer. I believe I was still in school by the time they left." 4 VRP at 542. For Mr. Rogers, as a
18 running start student taking classes at Clark College 4 VRP at 543-44, school would have ended
19 the first week of June, therefore Ms. Poindexter and her children would have left in May.
20 Making the timeline given by Mr. Rogers April to May, a maximum of two months.

21 Third, in reference to how long Ms. Poindexter and the complaining witness lived in the
22 home Montreal Douglas testifies "I briefly lived in the house with them when I was about 19
23 years old for a month and a half of two." 4 VRP at 561. Shortly after Mr. Douglas would add "I

1 recall it was roughly around, like, the middle or end to March to about the beginning of May.
2 She wasn't there for too long, about six weeks to two months," 4 VRP at 562. This time frame
3 was reiterated again by Mr. Douglas, and he further added that it was a short period of time, a
4 long time ago. 4 VRP at 572, 581-82.

5 Finally, Detective Hernandez was asked "And what did he indicate about that length of
6 time?" to which she answered, "A couple months." A moment later Detective Hernandez added
7 "Or three months. I don't know. I read it from the transcript a few minutes ago." 4 VRP at 484.
8 This testimony is of Detective Hernandez being unsure and trying to figure out what length of
9 time Petitioner told her that the complaining witness and her family lived in the home, during the
10 March 1, 2016 investigative interview. Due to Detective Hernandez being unable to find the
11 exact timeframe Petitioner states in the transcripts of the March 1, 2016 investigative interview,
12 Detective Hernandez testimony is that Petitioner stated either two months or Petitioner stated
13 three months. Since Detective Hernandez' testimony is uncertain it cannot be relied upon as an
14 exact representation of Petitioner's statements. Later Detective Phelps acknowledged that
15 Petitioner said two or three months and that this was an estimate of a timeframe that happened
16 six or more years prior to the March 1, 2016 investigative interview. 4 VRP at 492-93. Detective
17 Phelps would shortly after be referred again to the March 1, 2016 investigative interview
18 transcripts and acknowledged "Okay. Yeah, at that point in the conversation he said it was less
19 than two months." 4 VRP at 493. Additionally, the Petitioner would testify to a specific
20 timeframe that is less than two months.

21 Q. How long do you recall -- or if you recall -- did Amanda and her children live at the
house with you?

22 A. I do not have exact dates because it's been quite a while, but I usually try to navigate

things from my past based on, like, important dates. So my brother's birthday was March 23 I know that they were not there for my brother's birthday. And I got into a car accident on June 8th of that year, and she -- that was a few days after she left the house.

Q. Okay. So sometime between March 23rd and June 8th?

A. Yes, sir.

Q. But not necessarily that whole time?

A. Say that again.

Q. I said, but not necessarily that whole time?

A. That she was there? No. Not -- I'm not sure. I know for a fact she wasn't there on -- before my brother's birthday or on my brother's birthday. I know that she left a few days before my car accident.

Q. Okay. What, if anything, do you remember about the circumstances of her leaving?

A. It was tumultuous at best.

Q. All right. What -- was there a dispute?

A. Yes, sir.

Q. Can you tell me what the -- what caused the dispute without telling me what anyone said specifically?

A. The dispute, it started over -- it started over the rent. She -- her -- my mother asked her for the rent they didn't agree on it. At the time I was not -- she -- she then gave me a call because I was out and about. She was venting to me. I stopped her from venting because I felt like she was disrespecting my mother. She hung up on me. When I got home, she was no longer there.

She came back about a week and a half or two weeks later, and when she started

1 removing her stuff, I asked for the key back before she left. She -- it became an issue
2 about her giving the key back before she left. She called the police the police showed up,
3 separated us, got each person's story. Stayed there for her to get her stuff, made sure I got
4 the key back and went about their way.

5 Q. So some clarification questions here for you. You said that your recollection is that
6 they left a few days before you were in this car accident, which I believe you said was
7 June 8th?

8 A. Yes, sir.

9 Q. Now, when you say they left, is that them coming back for the stuff, or is that the --
10 when they were no longer there?

11 A. So them coming back for the stuff, so the day the police was called, a few days later I
12 got into a car accident.

13 Q. Okay. So based on what you said, is it true, then, that there's actually -- you said a
14 week or two before that where they weren't actually living there?

15 A. Yes, sir. 4 VRP at 604-06.

16 Therefore, all defense witnesses testify to a one and a half to two month timeframe that
would have begun in late March or Early April and ended a week or two before June 8, 2010.

17 d. Defense Presented

18 Petitioner was very clear that the reason the evidence at issue is important is because it
19 significantly limits the possibility that these crimes could have occurred when all other testimony
20 is considered. This was made clear during trial testimony and the defense's closing argument 5
21 VRP at 727-28, 729, 736-37 (Exhibit L). Petitioner's defense was a) the complaining witness and
22 her family did not live with the Petitioner and his family for a year, instead they only lived with

1 Petitioner and his family for 6-8 weeks b) the short amount of time the Petitioner had with the
2 complaining witness in addition to 1. the amount of people in the home (8 people), 2. the limited
3 space in the home (760 ft2 of living space), and 3. the schedules of everyone in the home,
4 especially the Petitioners, makes it impossible for these crimes to have been committed and c)
5 the way the two families separated was not on good terms, resulting in the 2010 police incident.
6 5 VRP at 740-44.

7 The Petitioner testified that the complaining witness and her family began living in the
8 home after March 23, 2010 and the date this 2010 police incident occurred is before June 8,
9 2010, with the complaining witness and her family being out of the home a few weeks before
10 this incident occurred. 4 VRP at 604-06. Ms. Poindexter also testifies that the complaining
11 witness and her family had left the home before this incident occurred. 3 VRP at 347, 348, 365.
12 The time difference, and thus the evidence in question, is significant because 1) more time
13 allows for more opportunity 2) whoever's timeframe is accurate would more likely than not be
14 considered more credible and 3) the defense's significantly shorter timeframe coupled with the
15 testimony of all defense witnesses and portions of Ms. Poindexter's testimony, makes it
16 impossible for any of these crimes to have occurred. The evidence in question is even more
17 significant because this entire case was a credibility contest, with no physical evidence
18 presented. Having a piece of evidence that corroborates and adds credibility to the defense theory
19 over the prosecutions becomes even more important due to the case being a credibility contest.
20 This creates "reasonable probability" that one juror might have reasonable doubt that these
21 crimes were committed. Especially since the jurors in this case did not initially agree on a verdict
22 for multiple charges during their deliberations (Exhibit F). Because it's reasonably probable that
23 had the evidence been disclosed =====to the defense, Petitioner's trial would have been different,

1 resulting in a different outcome. Therefore, the evidentiary suppression "undermines confidence
2 in the outcome of the trial." Bagley, 473 U.S. at 678.

3 e. Public Defender Misrepresentation

4 Alternatively, Public Defender Staples misrepresented the Petitioner. Prosecutor
5 Hayes intentionally failed to disclose documents favorable to the defense. Upon Public
6 Defender Staples being made aware of the unavailability of documentation of the 2010
7 police incident that was in Detective Hernandez possession while investigating this case,
8 before the case was given to the jury, he failed to due divulge to Petitioner the situation
9 (Exhibit R) and file a motion to the trial court for its production or dismissal of the case
10 under Brady v. Maryland, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963). Having
11 knowledge of the undivulged information was not ineffective assistance of counsel, but a
12 blatant misrepresentation of the Petitioner that inherently caused a miscarriage of justice
13 and was crucial to be considered at trial allowing Petitioner his right to present a defense.
14 Failing to divulge and file a motion to the trial court for the missing evidence's
15 production or dismissal of the case under Brady, upon Prosecutor Hayes acknowledging
16 the existence of the evidence and not being able to produce it to the defense, is unlikely to
17 be part of a reasonable trial strategy. Particularly when the missing evidence is the only
18 tangible, unbiased evidence from the time in question and it corroborates the Petitioner's
19 story.

20 Additionally, the derelicted duties of Public Defender Staples' actions violated the
21 Rule of Professional Conduct (RPC). Furthermore, Public Defender Staples derelicted
22 duties is and was actually and substantially prejudicial to Petitioner's right to a fair trial.
23 This was discovered twenty-two months after Petitioner's convictions when Petitioner

1 upon appeal requested his entire case file from Public Defender Staples. After twenty-two
2 months of due diligence with discovering this critical and material documentation
3 causing both Prosecutor Hayes and Public Defender Staples to exercise in bad faith in
4 bringing defendant to trial in order to bring forth conviction. This issue is ripe for review
5 and made under the fundamental fairness doctrine.

6 The missing evidence issue in this case involves evidence the state failed to
7 preserve police report, 911 call recording, CAD log, dispatch call notes, officer notes and
8 any other evidence related to the 2010 police incident, specifically the documentation of
9 the 2010 police incident that was in Detective Hernandez's possession while investigating
10 this case. Case law is clear that the loss of any one of the materially exculpatory pieces of
11 evidence, without a reasonable way for the defense to obtain comparable evidence, is
12 sufficient to justify vacation and dismissal, and requires vacation and dismissal of the
13 convictions against the Petitioner with prejudice. Because exculpatory evidence was lost
14 from these sources, and the nature of the evidence left the Petitioner unable to obtain
15 comparable evidence, defense was unable to present a complete defense. Because the
16 value of the materially exculpatory evidence was apparent prior to its destruction, this
17 Court need not consider whether the State acted in bad faith. Petitioner requests the
18 convictions against him be vacated and dismissed with prejudice under both the Federal
19 and Washington State Constitutions for due process violations for failure to preserve
20 evidence.

21 4) Aggravating Factors

22 i. RCW 9.94A.535(3)(n)

1 Petitioner still contends the trial testimony cannot support the jury finding of RCW
2 9.94A.535(3)(n) for the Petitioner's convictions in counts 2-5 (Exhibit H). RCW
3 9.94A.535(3)(n) states "The defendant used his or her position of trust, confidence, or
4 fiduciary responsibility to facilitate the commission of the current offense." Petitioner
5 was charged with six counts across two distinctly separate charging periods that were
6 separated by up to two years. Count 1 had a charging period of January 1, 2008 -
7 December 31, 2008 (2008 charging period) and counts 2-6 had a charging period of
8 January 1, 2010 - December 31, 2010 (2010 charging period) (Exhibit C). Prosecution
9 witness Amanda Poindexter, mother of the complaining witness, testified on cross-
10 examination that during the 2010 charging period, Petitioner had no responsibilities in
11 relation to her children (Exhibit J):

12 Q: Okay. So, and you testified about the arrangements that -- part of your motivation in
13 getting this night job was so that you didn't have to pay for childcare during the day?

14 A: And I didn't have to worry about anybody else watching my kids during the daytime.

15 Q: Right.

16 A: I could watch them during the daytime.

17 Q: Right. And you testified that school on school nights, bedtime's nine -- or you said
18 before school time or during school week bedtime for them was 9:00, and so they'd
19 already be in bed by the time you left for work?

20 A: Correct.

21 Q: Okay, Including Jazmyne?

22 A: Correct.

1 Q: Now, I was a little confused about you -- you didn't have any specific responsibilities
2 that related to the kids, other than, say, not -- make sure the house didn't burn down?

3 A: Correct. 3 VRP at 368-69+

4 Petitioner was found guilty of RCW 9.94A.535(3)(n) on counts 2-5, each of
5 which was within the 2010 charging period. This guilty finding under RCW
6 9.94A.535(3)(n) is contrary to the testimony of Ms. Poindexter. Any potential position of
7 trust or confidence, as it relates to the 2008 charging period cannot reasonably be inferred
8 to have carried over to the 2010 charging period after two years of no contact between the
9 Petitioner and the complaining witness. And if somehow it can be inferred to have carried
10 over from the 2008 charging period to the 2010 charging period, Petitioner was not
11 convicted of count 1 the only count related to the 2008 charging period. Since the finding
12 of guilt under RCW 9.94A.535(3)(n) on counts 2-5 cannot be supported by the trial
13 testimony, Petitioner requests the finding of guilt under RCW 9.94A.535(3)(n) be
14 vacated.

15 ii. RCW 9.94A.535(3)(g)

16 Petitioner still contends the jury finding of RCW 9.94A.535(3)(g) for the
17 Petitioner's convictions in counts 2-5 (Exhibit H) cannot be supported by the evidence
18 presented. RCW 9.94A.535(3)(g) states "The offense was part of an ongoing pattern of
19 sexual abuse of the same victim under the age of eighteen years manifested by multiple
20 incidents over as prolonged period of time." The term "prolonged period" is not defined
21 in this statute, nor is a "prolonged period" specifically defined by any common
22 understanding. Because a "prolonged period" is undefined it can reasonably mean a few
23 days, a few months, or a few years, each interpretation would reasonably be a prolonged

1 period of time. See State v. Dodd, 120 Wn.2d 1, 27, 838 P.2d 86 (1992)(one day period
2 considered a "prolonged period" of time) State v. Brown, 132 Wn.2d 529, 556-57, 940
3 P.2d 546 (1997)(two day period considered a "prolonged period" of time) See also State
4 v. Brush, 183 Wn.2d 550, 557, 353 P.3d 213 (2015)(Noting "The Court of Appeals
5 reviewed three prior Court of Appeals cases and concluded that they 'suggest[ed] that
6 years are required' in order to find a 'prolonged period' of time." See State v. Quigg, 72
7 Wn. App. 828, 841, 866 P.2d 655 (1994) (three-year period considered a "prolonged
8 period" of time for one victim, but three days not long enough to be considered a
9 "prolonged period" of time for another victim) State v. Duvall, 86 Wn. App. 871, 877,
10 940 P.2d 671 (1997)(two year period considered a "prolonged period" of time) State v.
11 Schmeck, 98 Wn. App. 647, 651, 990 P.2d 472 (1999) (two year period considered a
12 "prolonged period" of time)). "If, after examining the ordinary meaning of the statute's
13 language and its context in the statutory scheme, more than one reasonable interpretation
14 exists, we treat the statute as ambiguous." State v. Conover, 183 Wn.2d 706, 711-12, 355
15 P.3d 1093 (2015) (citing State v. Jacobs, 154 Wn.2d 596, 600-01, 115 P.3d 281 (2005)).
16 The term "prolonged period" in this statute is ambiguous allowing for multiple reasonable
17 interpretations. The ambiguity caused by the term "prolonged period" constitutes an
18 ambiguity that must be resolved using the rule of lenity.

19
20 In criminal cases, the rule of lenity requires interpretation of the statute strictly in favor of
21 the defendant. State v. Weatherwax, 188 Wn.2d 139, 155, 392 P.3d 1054 (2017)(citing Conover,
22 183 Wn.2d at 712) See also Jacobs, 154 Wn.2d at 601 (stating "the rule of lenity requires us to
23 interpret the statute in favor of the defendant absent legislative intent to the contrary"). "The

1 underlying rationale for the rule of lenity is to place the burden on the legislature to be clear and
2 definite in criminalizing conduct and establishing criminal penalties" Weatherwax, 188 Wn.2d at
3 155. (Citing State v. Tvedt, 153 Wn.2d 705, 710-11, 107 P.3d 728 (2005)). Therefore, RCW
4 9.94A.535(3)(g) must be interpreted in the Petitioner's favor, due to the statute containing the
5 ambiguous term "prolonged period."

6 Additionally, even if a "prolonged period" could be defined, the trial testimony does not
7 specify when these crimes occurred. Without identifying when these crimes occurred there
8 cannot be a determination of how long of a period of time these crimes occurred over. And
9 without knowing how long of a period of time these crimes occurred over, there can be no
10 determination that these crimes occurred over a "prolonged period" of time. Therefore, the trial
11 testimony cannot be a basis for a finding of guilt under RCW 9.94A.535(3)(g). Since the finding
12 of guilt under RCW 9.94A.535(3)(g) on counts 2-5 cannot be supported by the trial testimony,
13 Petitioner requests the finding of guilt under RCW 9.94A.535(3)(g) be vacated.

14 5) Due Process/Lack of Jurisdiction

15 Petitioner still contends that he did not receive proper due process due to the state's lack
16 of jurisdiction during a significant portion of the charging period for each of the convictions,
17 violating Petitioner's Fourteenth Amendment Due Process rights under the United States
18 Constitution and State v. Aho, 137 Wn.2d 736, 975 P.2d 512 (1999). "[J]urisdiction is
19 comprised of only two components: jurisdiction over the person and subject matter jurisdiction."
20 In re Marriage of Buecking, 179 Wn.2d 438, 447, 316 P.3d 999 (2013) (citing State v. Posey,
21 174 Wn.2d 131, 138, 272 P.3d 840 (2012)). The matter of jurisdiction determines if the courts
22 have the authority to render a judgment in the case. Courts can only render judgment in cases
23 within its jurisdiction. Washington State Courts jurisdiction is the State of Washington. No

1 Washington State Court has the authority to adjudicate matters outside of the State of
2 Washington.

3 Petitioner was convicted of counts 2-5 during the charging period of January 1, 2010 -
4 December 31, 2010 (2010 charging period) (Exhibit C). Prosecution witness Amanda
5 Poindexter, testifies that she and all of her children, including the complaining witness, moved
6 from Alaska to the State of Washington on either March 10, 2010, or April 10, 2010. 3 VRP at
7 333-34. This establishes that the complaining witness was not in the State of Washington during
8 the first two or three months of the 2010 charging period, but instead in Alaska. The period
9 charged by the State cannot predate the jurisdiction of the State of Washington. Therefore, the
10 State of Washington does not have jurisdiction over any portion of the charging period prior to
11 the complaining witness entering the State of Washington's jurisdiction either on March 10, 2010
12 or April 10, 2010.

13 Petitioner was found guilty of counts 2-5 during the 2010 charging period (Exhibit C).
14 On the jury verdict forms for counts 2-5, the jury did not specify when during the charging
15 period each act making up the convictions in counts 2-5 occurred (Exhibits C and G). This
16 means the jury could have found Petitioner guilty of acts occurring on January 21, 2010,
17 February 16, 2010, March 6, 2010, or any other date between January 1, 2010 and March 10,
18 2010. Because any date between January 1, 2010, and March 10, 2010 would have occurred
19 before the State of Washington had jurisdiction in this case, the convictions of counts 2-5
20 resulted in Petitioner possibly being illegally convicted in the State of Washington of acts
21 occurring outside of the State of Washington's jurisdiction.

22 A case similar to the Petitioner's is State v. Aho, in which the defendant was convicted of
23 crimes with a charging period that began with dates predating the effective statute. The jury did

1 not specify when the acts resulting in the convictions occurred, so it was possible the defendant's
2 convictions was illegally based upon acts that occurred before the effective date of the statute.
3 State v. Aho, 137 Wn.2d 736, 975 P.2d 512 (1999).

4 When comparing Aho to the Petitioner's case, the cases line up closely. In Aho, the issue
5 was the charging period began with dates predating the statute's effective date. Similarly in the
6 Petitioner's case, the issue is the charging period began with dates predating the State of
7 Washington's jurisdiction (Exhibit C and E). In Aho, the jury never specified when the acts
8 constituting the convictions occurred. Same in the Petitioner's case, the jury never specified
9 when the acts constituting the convictions occurred. (Exhibit G) The Washington State Supreme
10 Court ruled that "Because the jury did not identify when the acts that it found constituted the
11 offense occurred, it is possible that Aho has been illegally convicted based upon an act or acts
12 occurring before the effective date of the child molestation statute. Accordingly, Aho's
13 convictions for child molestation violate due process." State v. Aho, 137 Wn.2d at 744.
14 Similarly, because the jury did not identify when the acts that it found constituted the offense
15 occurred, it is possible that Petitioner has been illegally convicted based upon an act or acts
16 occurring before the State of Washington's jurisdiction began. Accordingly, Petitioner's
17 convictions also violate due process.

18 Therefore, Petitioner requests the finding of guilt be vacated and dismissed with
19 prejudice for violation of Petitioner's Fourteenth Amendment Due Process rights and State v.
20 Aho, 137 Wn.2d 736, 975 P.2d 512 (1999).

1 **CONCLUSION**

2 In conclusion, Respondent State of Washington has failed to respond to any of the issues
3 listed in Petitioner's initial petition. And Petitioner has demonstrated that Petitioner's criminal
4 history and offender score was inaccurately determined as it included a washed-out conviction, a
5 conviction that was not and cannot be proven to be part of the Petitioner's criminal history, and
6 the failure of the trial court to do a proper same criminal conduct analysis. Petitioner has also
7 demonstrated that the destruction of Brady evidence by the prosecution prevented the Petitioner
8 from receiving a fair trial. Additionally, neither of the aggravating factors can be supported by
9 the trial testimony and therefore the State did not prove the aggravating factors beyond a
10 reasonable doubt. Further, Petitioner was possibly illegally convicted based upon an act or acts
11 occurring before the State of Washington's jurisdiction began violating Petitioner's Fourteenth
12 Amendment Due Process rights and State v. Aho, 137 Wn.2d 736, 975 P.2d 512 (1999).
13 Petitioner therefore requests that his personal restraint petition be granted, and the remedy
14 recommended for each issue be applied.

15
16 RESPECTFULLY submitted this 23 day of March 2023.

17
18 DARYL ROGERS
19 Daryl Rogers
20 412163
Airway Heights Corrections Center
P.O. Box 2049
Airway Heights, WA 99001

EXHIBITS

Exhibit A – Motion Ruling by Commissioner Bearse (May 10, 2022)

Exhibit B - Perfection Letter (December 5, 2022)

Exhibit C - Judgment and Sentence

Exhibit D - Double Jeopardy Analysis

Exhibit E - Courts Instructions to The Jury

Exhibit F - Jury Question

Exhibit G - Jury Verdict Forms

Exhibit H - Special Verdict Forms

Exhibit I - Verbatim Report Proceedings Volume II

Exhibit J - Verbatim Report Proceedings Volume III

Exhibit K - Verbatim Report Proceedings Volume IV

Exhibit L - Verbatim Report Proceedings Volume V

Exhibit M - Verbatim Report Proceedings Volume VI

Exhibit N - Daryl Rogers CAD Log Request Response

Exhibit O - John Visser CAD Log Request Response

Exhibit P - Affidavit of Jeff Staples

Exhibit Q - Email from DPA Colin Hayes to PD Jeff Staples (Exhibits N-Q)

are the first four exhibits from the CrR 8.3(b) Brady Motion

Exhibit R - Affidavit of DR

Exhibit A



Washington State Court of Appeals

Division Two

909 A Street, Suite 200, Tacoma, Washington 98402
Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS:** 9-12, 1-4.

May 10, 2022

Daryl Rogers
DOC#412163
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

CASE #: 56791-1-II: Personal Restraint Petition of Daryl Rogers
Case Manager: Jodie

Counsel:

On the above date, this Court entered the following notation ruling:

A RULING BY COMMISSIONER BEARSE:

Petitioner has moved to voluntarily withdraw this Petition.

Petitioner originally filed this Petition as a CrR 7.8 motion in the trial court on March 18, 2022. The motion was timely filed in the trial court because Petitioner's direct appeal mandated less than a year earlier on April 19, 2021. RCW 10.73.090(3)(b). The trial court transferred the motion to this court for consideration as a Personal Restraint Petition.

Petitioner now asserts that given current restraints on his access to the prison law library, he needs additional time to research the law and issues required to prepare this matter as a Personal Restraint Petition and that withdrawal of the Petition without prejudice would assist this Court. But it is unclear from his filing whether Petitioner understands that withdrawal of this Petition would potentially render any later petition time-barred and subject to dismissal.

Accordingly, this Court denies the Motion to Withdraw this Petition, but this Court stays this matter until November 4, 2022, to allow Petitioner additional time to prepare and file a supplemental Petition. If Petitioner finds he needs additional time, he can file a Motion to Extend the Stay. Petitioner should note that any issues raised in the Supplemental Petition that were not raised in the original filing may potentially be subject to the one-year time bar under RCW 10.73.090.

If, knowing of the time bar risk, Petitioner still wishes to voluntarily withdraw this Petition, he may file a new Motion to Voluntarily Withdraw the Petition.

Very truly yours,

A handwritten signature in black ink, appearing to be "Derek M. Byrne", is written over a horizontal line.

Derek M. Byrne
Court Clerk

DMB:jlt

Exhibit B



Washington State Court of Appeals

Division Two

909 A Street, Suite 200, Tacoma, Washington 98402

Derek Byrne, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS: 9-12, 1-4.**

December 5, 2022

Aaron Bartlett
Attorney at Law
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Daryl Rogers
DOC#412163
Airway Heights Corr Cntr
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CASE #: 56791-1-II Personal Restraint Petition of Daryl Rogers
Case Manager: Jodie

Dear Aaron Bartlett and Daryl Rogers:

On February 3, 2023, this Court determined that Petitioner's CrR 7.8 Motion was properly transferred from the superior court and accepted as a Personal Restraint Petition. *See* CrR 7.8(c)(2); *State v. Winston*, 105 Wn. App. 318, 323-24, 19 P.3d 495 (2001).

As RAP 16.9 requires, the Respondent must, within 60 days of receiving this letter and the attached copy of the Petition, file and serve a Response to the Petition on Petitioner or Petitioner's counsel and this Court. If referring to the record of another proceeding answers the Petition, include a copy of the relevant parts of that record. If a brief supports the Petition, we have attached a copy, and the Respondent's Answering Brief is likewise due within 60 days. RAP 16.10. If the Respondent determines that the relief sought is appropriate, he should so stipulate. Petitioner may file a Reply Brief if done so within 30 days of receiving service of the Respondent's Brief. *See* RAP 16.10(a)(2).

This Court has initially waived Petitioner's filing fee based on his affidavit stating that he is indigent. Please include in the Response any information you possess with regard to indigency and state whether you will contest Petitioner's indigency claim. Additionally, please include in the Response or in a motion to this Court any information you possess with regard to whether the filing fee waiver is proper under RCW 4.24.430.

When the time for filing briefs has expired, the Chief Judge will consider the Petition and enter appropriate orders. **The Court will defer any decisions on Motions for Appointment of Counsel and/or Motions for Production of the Record at Public Expense, if any, until we submit your Petition to the Chief Judge for consideration. RAP 16.11(a). Any request limited solely to the status of the Petition will be placed in the file without further action.** You will be notified if the Court decides to call for additional briefs or portions of the record other than what the parties filed or decides that oral argument will be scheduled. Thank you for your attention to this matter.

Counsel must comply with GR 31(e) and omit personal identifiers from all documents filed in this Court. This rule provides that "parties shall not include, and if present shall redact" social security numbers, financial account numbers, and driver's license numbers. The rule specifies that the parties have this responsibility and the Court will not review filed documents for compliance with this rule. Because unsealed briefs and other documents are made available to the public on the Court's website and at our office, counsel must ensure that personal identifiers are removed or redacted.

Very truly yours,

A handwritten signature in black ink, appearing to be "Derek M. Byrne", with a long horizontal line extending to the right.

Derek M. Byrne,
Court Clerk

DMB: jlt

Exhibit C

Jeff Staples

S9

**FILED**

JAN 23 2019 4:55

Scott G. Weber, Clerk, Clark Co.

**Superior Court of Washington
County of Clark****State of Washington, Plaintiff,**

vs.

DARYL ROGERS, aka DARYL CRAIG
ROGERS,
Defendant.

SID: WA21967548

If no SID, use DOB [REDACTED]

No. 17-1-00097-3

Felony Judgment and Sentence --**Prison**☒ **RCW 9.94A.507 Prison Confinement****(Sex Offense and Kidnapping of a Minor)****(FJS)**☒ **Clerk's Action Required, para 2,1, 4.1, 4.3a, 4.3b,
5.2, 5.3, 5.5 and 5.7**☐ **Defendant Used Motor Vehicle**☐ **Juvenile Decline** ☐ **Mandatory** ☐ **Discretionary****I. Hearing**

- 1.1 The court conducted a sentencing hearing this date, ^{and on December 21, 2018} the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

II. Findings

- 2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon

☐ guilty plea ☒ jury-verdict 11/2/2018 ☐ bench trial :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
02	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	1/1/2010 to 12/31/2010
03	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	FA	1/1/2010 to 12/31/2010
04	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	1/1/2010 to 12/31/2010
05	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	FA	1/1/2010 to 12/31/2010

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

☐ Additional current offenses are attached in Appendix 2.1a.☒ The defendant is a sex offender subject to indeterminate sentencing under **RCW 9.94A.507**.

The jury returned a special verdict or the court made a special finding with regard to the following:

Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))
 Page 1 of 16

0-000000104

CRR

- ☐ For crime(s) charged in Count(s) _____ **domestic violence** as defined in RCW 10.99.020(5) was pled and proved.
- ☐ For crime(s) charged in Count(s) _____ the defendant and the victim are **"family or household members"** as defined in RCW 10.99.020(3).
- ☐ For crime(s) charged in Count(s) _____ the defendant and the victim are **"family or household members"** as defined in RCW 9A.36.041(4).
- ☐ The defendant used a **firearm** in the commission of the offense in Count _____. RCW 9.94A.825, 9.94A.533.
- ☐ The defendant used a **deadly weapon other than a firearm** in committing the offense in Count _____. RCW 9.94A.825, 9.94A.533.
- ☐ Count _____, is aggravated murder in the first degree committed while the defendant was ☐ under 16 years of age ☐ 16 or 17 years of age when the offense was committed.
- ☐ Count _____, was committed while the defendant was under 18 years of age and the time of confinement is over 20 years.
- ☐ The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count _____. RCW 9.94A.839.
- ☐ In count _____ an internet advertisement in which the victim of the crime was described or depicted was instrumental in facilitating the commission of the crime. RCW 9.68A.100, RCW 9.68A.101, or RCW 9.68A.102, Laws of 2013, ch. 9, §1.
- ☐ The offense was predatory as to Count _____. RCW 9.94A.836.
- ☐ The victim was under 15 years of age at the time of the offense in Count _____. RCW 9.94A.837.
- ☐ The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count _____. RCW 9.94A.838, 9A.44.010.
- ☐ The defendant acted with **sexual motivation** in committing the offense in Count _____. RCW 9.94A.835.
- ☐ This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- ☐ In count _____ the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21), RCW 9.94A._____.
- ☐ Count _____, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- ☐ The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count _____. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- ☐ Count _____ is a **criminal street gang-related felony** offense in which the defendant compensated, threatened, or solicited a minor in order to involve that **minor** in the commission of the offense. RCW 9.94A.833.
- ☐ Count _____ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang member or associate** when the defendant committed the crime. RCW 9.94A.702, 9.94A.829.
- ☐ The defendant committed ☐ **vehicular homicide** ☐ **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- GY ☐ In Count _____, the defendant had (number of) _____ **passenger(s) under the age of 16** in the vehicle. RCW 9.94A.533.

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- ☐ Count _____ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- ☐ In Count _____ the defendant has been convicted of assaulting a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault, as provided under RCW 9A.36.031, and the defendant intentionally committed the assault with what appeared to be a firearm. RCW 9.94A.831, 9.94A.533.
- ☐ Count _____ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- ☐ The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- ☐ Reasonable grounds exist to believe the defendant is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. RCW 9.94B.080
- ☐ In Count _____, assault in the 1st degree (RCW 9A.36.011) or assault of a child in the 1st degree (RCW 9A.36.120), the offender used force or means likely to result in death or intended to kill the victim and shall be subject to a mandatory minimum term of 5 years (RCW 9.94A.540).
- ☐ Counts _____ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).
- ☐ Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

<i>Crime</i>	<i>Cause Number</i>	<i>Court (county & state)</i>	<i>DV* Yes</i>
1.			

*DV: Domestic Violence was pled and proved

- ☐ Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

2.2 Criminal History (RCW 9.94A.525):

<i>Crime</i>	<i>Date of Crime</i>	<i>Date of Sentence</i>	<i>Sentencing Court (County & State)</i>	<i>A or J Adult, Juv.</i>	<i>Type of Crime</i>	<i>DV* Yes</i>
1 BURGLARY IN THE FIRST DEGREE	4/4/2005	4/28/2005	Clark County Superior Court (Clark, WA)	J	Violent class A felony	
2 ATTEMPTED RESIDENTIAL BURGLARY	2/25/2007	5/23/2007	Clark County Superior Court (Clark, WA)	J	Class C felony	

*DV: Domestic Violence was pled and proved

- ☐ Additional criminal history is attached in Appendix 2.2.
- ☐ The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- ☐ The prior convictions listed as number(s) _____, above, or in appendix 2.2, are one offense for purposes of determining the offender score (RCW 9.94A.525)
- ☐ The prior convictions listed as number(s) _____, above, or in appendix 2.2, are not counted as points but as enhancements pursuant to RCW 46.61.520.
- ☐ The defendant has previously had DNA collected in this state pursuant to a previous conviction. RCW 43.43.7541.

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2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
02	8	XII	209 MONTHS to 277 MONTHS	n/a	209 MONTHS to 277 MONTHS	LIFE
03	8	X	129 MONTHS to 171 MONTHS	n/a	129 MONTHS to 171 MONTHS	LIFE
04	8	XII	209 MONTHS to 277 MONTHS	n/a	209 MONTHS to 277 MONTHS	LIFE
05	8	XII	209 MONTHS to 277 MONTHS	n/a	209 MONTHS to 277 MONTHS	LIFE

* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (RPh) Robbery of a pharmacy, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude, (ALF) assault law enforcement with firearm, RCW 9.94A.533(12), (P16) Passenger(s) under age 16.

☐ Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows: _____.

2.4 ☐ Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

☐ below the standard range for Count(s) _____.

☐ above the standard range for Count(s) _____.

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

☐ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☐ found by jury, by special interrogatory.

☐ within the standard range for Count(s) _____ but served consecutively to Count(s) _____.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence.

☐ In the case of more than one aggravating factor, the Court finds that the same sentence would be imposed if any one of the aggravating factors is not upheld on appeal.

2.5 Ability to Pay Legal Financial Obligations.

☒ The defendant is "indigent" pursuant to RCW 10.101.010(3)(a)-(c) because:

☐ The defendant receives public assistance as defined in RCW 10.101.010(3)(a).

☐ The defendant is involuntarily committed to a public mental health facility.

☒ The defendant receives an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level.

☐ The defendant is not "indigent" as defined in RCW 10.101.010(3)(a)-(c) and therefore the court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources, the nature of the burden that payment of costs will impose, and the likelihood that the defendant's status will change. The court finds:

☐ That the defendant has the ability to pay the legal financial obligations imposed herein. RCW 10.01.160.

☐ That the defendant does not presently have the ability to pay, but is anticipated to be able to pay financial obligations in the future. RCW 10.01.160.

☐ That the defendant does not have the ability to pay and is not anticipated to be able to pay financial obligations in the future. RCW 10.01.160.

☐ Other: _____.

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☐ The following extraordinary circumstances exist that make restitution inappropriate. (RCW 9.94A.753):

☐ The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

2.6 ☐ **Felony Firearm Offender Registration.** The defendant committed a felony firearm offense as defined in RCW 9.41.010.

☐ The court considered the following factors:

☐ the defendant's criminal history.

☐ whether the defendant has previously been found not guilty by reason of insanity of any offense in this state or elsewhere.

☐ evidence of the defendant's propensity for violence that would likely endanger persons.

☐ other: _____

☐ The court decided the defendant ☐ should ☐ should not register as a felony firearm offender.

III. Judgment

3.1 The defendant is *guilty* of the Counts and Charges listed in Paragraph 2.1.

3.2 ☒ The court *dismisses* Counts 1 and 5 in the charging document without prejudice on motion of the State.

IV. Sentence and Order

It is ordered:

4.1 **Confinement.** The court sentences the defendant to total confinement as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

_____ months on Count

_____ months on Count

_____ months on Count

_____ months on Count

☐ The confinement time on Count(s) _____ contain(s) a mandatory minimum term of _____.

☐ The confinement time on Count _____ includes _____ months as enhancement for ☐ firearm ☐ deadly weapon ☐ sexual motivation ☐ VUCSA in a protected zone ☐ manufacture of methamphetamine with juvenile present ☐ sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: 277

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: _____

This sentence shall run consecutively with the sentence in the following cause number(s) (see RCW 9.94A.589(3)): _____

Confinement shall commence immediately unless otherwise set forth here: _____

(b) **Confinement.** RCW 9.94A.507 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count	02	minimum term	<u>277</u> months	maximum term	Statutory Maximum
Count	03	minimum term	<u>171</u> months	maximum term	Statutory Maximum

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Count	04	minimum term	<u>277</u> months	maximum term	Statutory Maximum
Count	05	minimum term	<u>277</u> months	maximum term	Statutory Maximum

(c) **Confinement.** RCW 10.95.030 (Aggravated murder and under age 18.) The court orders the following:

Count _____ minimum term: _____ maximum term: _____

(d) **Credit for Time Served:** The defendant shall receive credit for eligible time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.505. The jail shall compute time served.

(e) ☐ **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for remaining time of confinement.

4.2 Community Custody. (To determine which offenses are eligible for or required for community placement or community custody see RCW 9.94A.701)

(A) The defendant shall be on community placement or community custody for the longer of:

- (1) the period of early release. RCW 9.94A.728(1)(2); or
- (2) the period imposed by the court, as follows:

Count(s) _____, 36 months for Serious Violent Offenses
 Count(s) _____, 18 months for Violent Offenses
 Count(s) _____, 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)
 Count(s) _____, _____ months. RCW 9.94A.701(9)

(Sex offenses, only) For count(s) 02, 03, 04, 05, sentenced under RCW 9.94A.507, for any period of time the defendant is released from total confinement before the expiration of the statutory maximum.

The total time of incarceration and community supervision/custody shall not exceed the statutory maximum for the crime.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) for sex offenses, submit to electronic monitoring if imposed by DOC; and (10) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody. For sex offenders sentenced under RCW 9.94A.709, the court may extend community custody up to the statutory maximum term of the sentence.

The court orders that during the period of supervision the defendant shall:

- ☐ not possess or consume alcohol.
☐ have no contact with: _____
☐ remain ☐ within ☐ outside of a specified geographical boundary, to wit: _____

☐ not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).

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- ☐ participate in an education program about the negative costs of prostitution.
- ☐ participate in the following crime-related treatment or counseling services:
- ☐ undergo an evaluation for treatment for ☐ domestic violence ☐ chemical dependency ☐ mental health ☐ anger management, and fully comply with all recommended treatment.
- ☐ comply with the following crime-related prohibitions:

☒ Other conditions: all conditions listed in Appendix A (attached).

(C) For sentences imposed under RCW 9.94A.507, the Indeterminate Sentence Review Board may impose other conditions (including electronic monitoring if DOC so recommends). In an emergency, DOC may impose other conditions for a period not to exceed seven working days.


Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

(D) If the defendant committed the above crime(s) while under age 18 and is sentenced to more than 20 years of confinement:

- (i) As long as the defendant's conviction is not for aggravated first degree murder or certain sex crimes, and the defendant has not been convicted of a crime committed after he or she turned 18 or committed a disqualifying serious infraction as defined by DOC in the 12 months before the petition is filed, the defendant may petition the Indeterminate Sentence Review Board (Board) for early release after the defendant has served 20 years.
- (ii) If the defendant is released early because the petition was granted or by other action of the Sentence Review Board, the defendant will be subject to community custody under the supervision of the DOC for a period of time determined by the Board, up to the length of the court-imposed term of incarceration. The defendant will be required to comply with any conditions imposed by the Board.
- (iii) If the defendant violates the conditions of community custody, the Board may return the defendant to confinement for up to the remainder of the court-imposed term of incarceration.

4.3a Legal Financial Obligations: The defendant shall pay to the clerk of this court:

JASS CODE

PCV	\$ 500.00	Victim assessment (mandatory)	RCW 7.68.035
PDV	\$	Domestic Violence assessment	RCW 10.99.080
	\$	Violation of a DV protection order (\$15 mandatory fine)	RCW 26.50.110
FRC		Criminal filing fee, (mandatory , however waive if Court found defendant to be indigent pursuant to RCW 10.101.010(3)(a)-(c) in section 2.5 above).	RCW 36.18.020.
CRC	\$	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Witness costs \$	WFR
		Sheriff service fees \$	SFR/SFS/SFW/WRF
		Jury demand fee \$	JFR
		Extradition costs \$	EXT

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Other \$ _____

PUB \$ _____ Fees for court appointed attorney RCW 9.94A.760

WFR \$ _____ Court appointed defense expert and other defense costs RCW 9.94A.760

FCM/MTH \$ _____ ☐ Fine RCW 9A.20.021
☐ VUCSA fine RCW 69.50.430
☐ Deferred due to indigency

CDF/LDI/PCD \$ _____ Drug enforcement Fund # ☐ 1015 ☐ 1017 (TF) RCW 9.94A.760

NTF/SAD/SDI

CLF \$ _____ Crime lab fee ☐ suspended due to indigency RCW 43.43.690

Red \$ ~~_____~~ DNA collection fee (**mandatory** unless DNA previously collected by prior conviction in this state). RCW 43.43.7541

FPV \$ _____ Specialized forest products RCW 76.48.140

PPI \$ _____ Trafficking/Promoting prostitution/Commercial sexual abuse of minor fee (may be reduced by no more than two thirds upon a finding of inability to pay.)
RCW 9A.40.100, 9A.88.120, 9.68A.105

\$ _____ Fee for Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct (\$1,000 fee for each separate conviction) RCW 9.68A.070

\$ _____ Other fines or costs for: _____

DEF \$ _____ Emergency response costs (\$1,000 maximum, \$2,500 max. effective Aug. 1, 2012) RCW 38.52.430

Agency: _____

RTN/RJN \$607.34 Restitution to: CRIME VICTIMS COMPENSATION PROGRAM (\$607.34)
(Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)

\$ _____ **Total** RCW 9.94A.760

☒ The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

☒ shall be set by the prosecutor.

☐ is scheduled for _____ (date).

☐ The defendant waives any right to be present at any restitution hearing (sign initials): _____.

☒ **Restitution** Schedule attached.

☐ Restitution ordered above shall be paid jointly and severally with:

RJN

Name of other defendant	Cause Number	Victim's name	Amount-\$

☐ The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

☐ All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ _____ per month commencing _____. RCW 9.94A.760.

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The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

☐ The court orders the defendant to pay costs of incarceration at the rate of \$ _____ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760. (This provision does not apply to costs of incarceration collected by DOC under RCW 72.09.111 and 72.09.480.).

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

4.3b ☐ **Electronic Monitoring Reimbursement.** The defendant is ordered to reimburse _____ (name of electronic monitoring agency) at _____, for the cost of pretrial electronic monitoring in the amount of \$ _____.

4.4 **DNA Testing.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. This paragraph does not apply if it is established that the Washington State Patrol crime laboratory already has a sample from the defendant for a qualifying offense. RCW 43.43.754.

☒ **HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

4.5 **No Contact:**

☒ The defendant shall not have contact with J.R.O. (female, DOB 6/30/1999) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for life (which does not exceed the maximum statutory sentence).

☒ The defendant is excluded or prohibited from coming within:

☐ 500 feet ☐ 880 feet ☒ 1000 feet of:

☒ J.R.O. (female, DOB 6/30/1999) (name of protected person(s))'s

☒ home/ residence ☒ work place ☒ school

☒ (other location(s)) person

☐ other location _____,

for life (which does not exceed the maximum statutory sentence).

☒ A separate Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed concurrent with this Judgment and Sentence.

4.6 **Other:** _____

4.7 **Off-Limits Order.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: _____

4.8 **Exoneration:** The Court hereby exonerates any bail, bond and/or personal recognizance conditions. Unit, if not on Community Custody for supervision.

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V. Notices and Signatures

- 5.1 Collateral Attack on Judgment.** If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.
- 5.2 Length of Supervision.** If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).
- 5.3 Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.
- 5.4 Community Custody Violation.**
- (a) If you are subject to a violation hearing and DOC finds that you committed the violation, you may receive a sanction of up to 30 days of confinement. RCW 9.94A.633(1).
 - (b) If you have not completed your maximum term of total confinement and you are subject to a violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.633(2)(a).
- 5.5a Firearms.** You may not own, use or possess any firearm, and under federal law any firearm or ammunition, unless your right to do so is restored by the court in which you are convicted or the superior court in Washington State where you live, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040 and RCW 9.41.047.
- 5.5b ☐ Felony Firearm Offender Registration.** The defendant is required to register as a felony firearm offender. The specific registration requirements are in the "Felony Firearm Offender Registration" attachment.

5.6 Sex and Kidnapping Offender Registration Laws of 2010, ch. 367 § 1, 10.01.200.

1. General Applicability and Requirements: Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.128, you are required to register.

If you are a resident of Washington, you must register with the sheriff of the county of the state of Washington where you reside. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of the state of Washington where you will be residing.

While in custody, if you are approved for partial confinement, you must register when you transfer to partial confinement with the person designated by the agency that has jurisdiction over you. You must also register within three business days from the end of partial confinement or release from confinement with the sheriff of the county where you reside.

If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your

school, place of employment, or vocation. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of your school, where you are employed, or where you carry on a vocation.

2. Offenders Who are New Residents, Temporary Residents, or Returning Washington Residents: If you move to Washington or if you leave this state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state. If you are visiting and intend to reside or be present 10 or more days in Washington, then you must register the location where you plan to stay or your temporary address with the sheriff of each county where you will be staying within three business days of your arrival.

3. Change of Residence Within State: If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of residence to the sheriff within three business days of moving. If you change your residence to a new county within this state, you must register with the sheriff of the new county within three business days of moving. Also within three business days, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you last registered.

4. Leaving the State or Moving to Another State: If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. If you move out of the state, you must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

5. Travel Outside the United States: If you intend to travel outside the United States, you must provide signed written notice of the details of your plan to travel out of the country to the sheriff of the county where you are registered. Notice must be provided at least 21 days before you travel. Notice may be provided to the sheriff by certified mail, with return receipt requested, or in person.

If you cancel or postpone this travel, you must notify the sheriff within three days of canceling or postponing your travel or on the departure date you provide in your notice, whichever is earlier.

If you travel routinely across international borders for work, or if you must travel unexpectedly due to a family or work emergency, you must personally notify the sheriff at least 24 hours before you travel. You must explain to the sheriff in writing why it is impractical for you to comply with the notice required by RCW 9A.44.130(3).

6. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12): You must give notice to the sheriff of the county where you are registered within three business days:

- i) before arriving at a school or institution of higher education to attend classes;
- ii) before starting work at an institution of higher education; or
- iii) after any termination of enrollment or employment at a school or institution of higher education.

7. Registration by a Person Who Does Not Have a Fixed Residence: Even if you do not have a fixed residence, you are required to register. Registration must occur within three business days of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within three business days after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register with the sheriff of the new county not more than three business days after

entering the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You must keep an accurate accounting of where you stay during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

8. Application for a Name Change: If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within three business days of the entry of the order. RCW 9A.44.130(7).

5.7 ☐ Department of Licensing Notice: The court finds that Count _____ is a felony in the commission of which a motor vehicle was used. **Clerk's Action** –The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.285. **Findings for DUI, Physical Control, Felony DUI or Physical Control, Vehicular Assault, or Vehicular Homicide (ACR information):**

- ☐ Within two hours after driving or being in physical control of a vehicle, the defendant had an alcohol concentration of breath or blood (BAC) of _____.
- ☐ No BAC test result.
- ☐ BAC Refused. The defendant refused to take a test offered pursuant to RCW 46.20.308.
- ☐ Drug Related. The defendant was under the influence of or affected by any drug.
- ☐ THC level was _____ within two hours after driving.
- ☐ Passenger under age 16. The defendant committed the offense while a passenger under the age of sixteen was in the vehicle.

Vehicle Info.: ☐ Commercial Veh.; ☐ 16 Passenger Veh.; ☐ Hazmat Veh.

5.8 ☐ Department of Licensing Notice – Defendant under age 21 only.

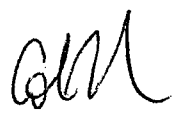
Count _____ is (a) a violation of RCW chapter 69.41 [Legend drug], 69.50 [VUCSA], or 69.52 [Imitation drugs], and the defendant was under 21 years of age at the time of the offense **OR** (b) a violation under RCW 9.41.040 [unlawful possession of firearm], and the defendant was under the age of 18 at the time of the offense **OR** (c) a violation under RCW chapter 66.44 [Alcohol], and the defendant was under the age of 18 at the time of the offense, **AND** the court finds that the defendant previously committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.

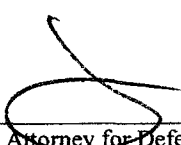
Clerk's Action –The clerk shall forward an Abstract of Court Record (ACR) to the DOL, which must revoke the Defendant's driver's license. RCW 46.20.265


5.9 Other: _____

Done in Open Court and in the presence of the defendant this date: Jan. 23, 2019


Judge/Print Name Robert Lewis


Deputy Prosecuting Attorney
WSBA No. 35387
Print Name: Colin P. Hayes


Attorney for Defendant
WSBA No. 40738
Print Name: Jeff Staples


Defendant
Print Name:
DARYL ROGERS

Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))
Page 12 of 16

Voting Rights Statement: I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: MARKER

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the _____ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Vancouver, Washington on (date): _____

Interpreter

Print Name

I, Scott G. Weber, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

Witness my hand and seal of the said Superior Court affixed this date: _____.

Clerk of the Court of said county and state, by: _____, Deputy Clerk

Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))
Page 13 of 16

Identification of the Defendant

DARYL ROGERS

17-1-00097-3

SID No: WA21967548

Date of Birth: [REDACTED]

(If no SID take fingerprint card for State Patrol)

FBI No. 47231DC7

Local ID No.

PCN No. _____

Other _____

Alias name, DOB: , aka DARYL CRAIG ROGERS, DARYL CRAIG ROGERS

Race: B

Ethnicity:

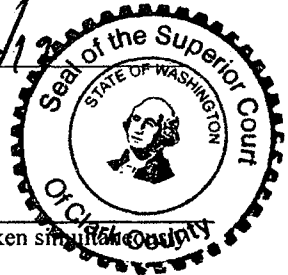
Sex: M

Fingerprints: I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court, Deputy Clerk

[Signature]

Dated: 1/23/22



The defendant's signature: *DARYL ROGERS*

Left four fingers taken simultaneously

Left
Thumb

Right
Thumb

Right four fingers taken simultaneously



Felony Judgment and Sentence (FJS) (Prison)
(Sex Offense and Kidnapping of a Minor Offense)
(RCW 9.94A.500, .505)(WPF CR 84.0400 (12/2017))
Page 14 of 16

"APPENDIX A"

CONDITIONS OF SENTENCE AND COMMUNITY CUSTODY

1. You shall commit no law violations. You shall notify your community corrections officer within 48 hours of any arrest or citation for an alleged violation of the law.
2. You shall not have any direct or indirect contact with the victim(s), including but not limited to personal, verbal, telephonic, written, or through a third person. You shall not come within one-thousand (1,000) feet of victim's person, home/residence, work place, school, or place of employment. These conditions are for the statutory maximum sentence of life, and shall also apply during any period of incarceration.

Additionally: ☒ a Sexual Assault Protection Order for the maximum period per RCW 7.90.150(6)(c).

Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest; any assault, drive-by shooting, or reckless endangerment that is a violation of this order is a felony. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order.

3. You shall not enter into or frequent video game parlors, playgrounds, parks, amusement parks, skate parks, public swimming pools, skating rinks, school grounds, malls, and any other areas routinely used by minors under the age of sixteen years as areas of play/recreation.
4. You shall not have any contact with minors under the age of sixteen years without prior approval of DOC and your sexual deviancy treatment provider.
5. You shall not possess or consume alcohol without prior approval from DOC and all treatment providers. RCW 9.94A.703(3)(e).
6. You shall submit to urine, breath, PBT/BAC, or other monitoring whenever requested to do so by your community corrections officer to monitor compliance with abstention from alcohol and non-prescribed controlled substances.
7. You shall obtain an evaluation for sexual deviancy conducted by a Washington State certified sexual deviancy treatment provider approved by DOC. You shall comply and cooperate with any recommended treatment. You shall not change sex offender treatment providers without notifying DOC and, if DOC objects to the change, then you must first obtain court approval after a hearing. "Cooperate with" means you shall follow all treatment directives, accurately report all sexual thoughts, feelings and behaviors in a timely manner and cease all deviant sexual activity. You shall comply with all requirements, restrictions, and rules of all recommended treatment program(s).
8. The sex offender therapist shall submit quarterly reports on your progress in treatment to DOC. The quarterly report shall reference the treatment plan and include the following, at a minimum: dates of attendance, your compliance with requirements, treatment activities, and your relative progress in treatment.

9. You shall, at your own expense, submit to polygraph examinations at the request of DOC. Such exams will be used to ensure compliance with the conditions of community custody and of your treatment program(s).
10. You shall not possess, use, access, or view any sexually explicit material as defined by RCW 9.68.130(2) unless given prior approval by DOC and your sexual deviancy treatment provider.
11. You shall not hold any position of trust or authority over minor children without prior approval of DOC and your sexual deviancy treatment provider.
12. You shall not enter into a dating relationship with another person who has minor children in their care or custody without prior approval of DOC and your sexual deviancy treatment provider.
13. You shall register as a sex offender as required under RCW 9A.44.130.
14. You may not reside within eight hundred eighty (880) feet of the facilities and grounds of a public or private school. RCW 9.94A.030; 9.94A.703(1)(c).
15. As soon as possible after sentencing, you shall undergo pretest counseling, Human Immunodeficiency Virus (HIV) testing, and posttest counseling at the direction of the Clark County Health Department as required by RCW 70.24.340. You shall contact the Clark County Health Department after sentencing or release from custody, whichever occurs last, to schedule an appointment for the counseling and testing. To schedule this appointment, you may call (360)397-8086.
16. You shall comply with any conditions imposed by DOC under RCW 9.94A.704. RCW 9.94A.703(1)(b).
17. You shall comply with all conditions listed in RCW 9.94A.703(2).

SUPERIOR COURT OF WASHINGTON - COUNTY OF CLARK

STATE OF WASHINGTON, Plaintiff,

v.

DARYL ROGERS,

Defendant.

SID: WA21967548

DOB [REDACTED]

NO. 17-1-00097-3

**WARRANT OF COMMITMENT TO STATE
OF WASHINGTON DEPARTMENT OF
CORRECTIONS**

THE STATE OF WASHINGTON, to the Sheriff of Clark County, Washington, and the State of Washington, Department of Corrections, Officers in charge of correctional facilities of the State of Washington:

GREETING:

WHEREAS, the above-named defendant has been duly convicted in the Superior Court of the State of Washington of the County of Clark of the crime(s) of:

COUNT	CRIME	RCW	DATE OF CRIME
02	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	1/1/2010 to 12/31/2010
03	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	1/1/2010 to 12/31/2010
04	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	1/1/2010 to 12/31/2010
05	RAPE OF A CHILD IN THE FIRST DEGREE	9A.44.073	1/1/2010 to 12/31/2010

and Judgment has been pronounced and the defendant has been sentenced to a term of imprisonment in such correctional institution under the supervision of the State of Washington, Department of Corrections, as shall be designated by the State of Washington, Department of Corrections pursuant to RCW 72.02, all of which appears of record; a certified copy of said judgment being endorsed hereon and made a part hereof,

NOW, THIS IS TO COMMAND YOU, said Sheriff, to detain the defendant until called for by the transportation officers of the State of Washington, Department of Corrections, authorized to conduct defendant to the appropriate facility, and this is to command you, said Superintendent of the appropriate facility to receive defendant from said officers for confinement, classification and placement in such correctional facilities under the supervision of the State of Washington, Department of Corrections, for a term of confinement of :

WARRANT OF COMMITMENT

Page 1

COUNT	CRIME	TERM
02	RAPE OF A CHILD IN THE FIRST DEGREE	277 Months
03	CHILD MOLESTATION IN THE FIRST DEGREE	171 Months
04	RAPE OF A CHILD IN THE FIRST DEGREE	277 Months
05	RAPE OF A CHILD IN THE FIRST DEGREE	277 Months

These terms shall be served concurrently to each other unless specified herein:

Department of Corrections to determine any credit for time served.

The term(s) of confinement (sentence) imposed herein shall be served consecutively to any other term of confinement (sentence) which the defendant may be sentenced to under any other cause in either District Court or Superior Court unless otherwise specified herein:

And these presents shall be authority for the same.

HEREIN FAIL NOT.

WITNESS, Honorable

JUDGE OF THE SUPERIOR COURT AND THE SEAL THEREOF THIS DATE: 1/23/19

SCOTT G. WEBER, Clerk of the
Clark County Superior Court

By: Cassie Ann
Deputy

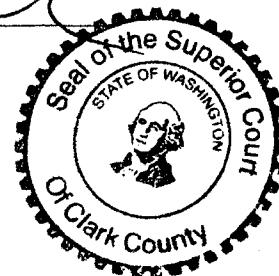


Exhibit D

FILED

JAN 23 2019 4:43

Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,

NO. 17-1-00097-3

vs.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW REGARDING
DOUBLE JEOPARDY AND SCORING

DARYL ROGERS,

Defendant.

On December 21, 2018, ^{and Jan. 23, 2019,} a sentencing hearing was held in this Court before the Honorable Robert Lewis. The Defendant was present with his attorney of record, Jeff Staples. Sr. Deputy Prosecuting Attorney Colin P. Hayes represented the State. The Court considered the testimony of Nancy Druckenmiller at the sentencing hearing, the evidence admitted at the sentencing hearing, the testimony and exhibits admitted at trial, and the verdicts of the jury. This court made the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

1.1 The evidence, to-convict instructions, elections by the State in closing argument to correspond specific incidents with specific counts, and the verdicts of the jury established that the Counts II - V cover three distinct incidents, divided as follows:

- (1) Counts II (Rape Child 1) and III (Child Molestation 1), relating to the incident on the couch in the living room where the Defendant got on top of the victim, with his front side against her back side, and rubbed his penis back and forth between the victim's

Findings of Fact and Conclusions of Law
Regarding Double Jeopardy and Scoring

1 of 3

Clark County Prosecuting Attorney
1013 Franklin St. / P.O. Box 5000
Vancouver, WA 98666-5000
(360) 397-2261 / FAX: (360) 397-2230

0-000000091

CRR

closed legs and, at one point while doing this, slightly penetrated the victim's vagina with his penis;

(2) Count IV (Rape Child 1), corresponding to the instance of oral sex that occurred in the Defendant's room when the victim was watching Hannah Montana on television; the Defendant gave the victim Dibs ice cream after the oral sex; and

(3) Count V (Rape Child 1), pertaining to the instance of oral sex that occurred in the bedroom of Dimitrius Rogers, brother of the Defendant.

1.2 The Defendant has the following prior criminal history:

CRIME	COUNTY/STATE CAUSE NO.	DATE OF CRIME	DATE OF SENTENCE	DV**? YES	PTS.
BURGLARY I (FIREARM)	CLARK/WA 05-8-00471-7	4/4/2005	4/28/2005		2
ATTEMPTED RESIDENTIAL BURGLARY	CLARK/WA 07-8-00221-4	2/25/2007	5/23/2007		½

II. CONCLUSIONS OF LAW

2.1 The court has jurisdiction over the Defendant and the subject matter of this action.

2.2 Sufficient evidence supports the jury's verdicts ^{and special verdicts} regarding Counts II – V; the defense motion for arrest of judgment is denied.

2.3 Under the "same evidence" test, the current convictions for the crimes of Rape of a Child in the First Degree in Count II and Child Molestation in the First Degree in Count III occurring in the same incident do not violate double jeopardy. *See State v. Land*, 172 Wn. App. 593, 600, 295 P.3d 782, 785 (2013), *review denied*, 177 Wn.2d 1016, 304 P.3d 114 (2013); *State v. French*, 157 Wn.2d 593, 610–12, 141 P.3d 54, 62–64 (2006); *State v. Wilkins*, 200 Wn. App. 794, 806–14, 403 P.3d 890, 897–901 (2017).

2.4 Double jeopardy does not require the dismissal of any of the current trial convictions.

~~2.5 The Washington Supreme Court case of *State v. Chenoweth*, 185 Wn.2d 218, 221–24, 370 P.3d 6, 8–9 (2016), controls this Court's calculation of the offender scores under the same criminal conduct analysis. The crimes of Child Molestation in the First Degree and Rape of a Child in the First Degree have different criminal intents and therefore cannot constitute the same criminal conduct even if occurring in the same incident. All current convictions score against one another.~~

2.5. The Court finds that Counts 2 and 3 are the same criminal conduct.


2.6 The Defendant has the following offender scores on the current convictions:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term
02	8	XII	209-277 months	n/a	209-277 months	LIFE
03	8	X	129-171 months	n/a	129-171 months	LIFE
04	8	XII	209-277 months	n/a	209-277 months	LIFE
05	8	XII	209-277 months	n/a	209-277 months	LIFE

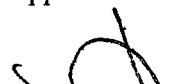
Entered this 23 day of January, 2019.


Superior Court Judge Robert Lewis

Approved; presented by:


Sr. Deputy Prosecuting Attorney
Colin P. Hayes, WSBA# 35387

Approved as to form only:


Attorney for Defendant
Jeff Staples, WSBA#

Findings of Fact and Conclusions of Law
Regarding Double Jeopardy and Scoring

3 of 3

Clark County Prosecuting Attorney
1013 Franklin St. / P.O. Box 5000
Vancouver, WA 98666-5000
(360) 397-2261 / FAX: (360) 397-2230

0-000000093

Exhibit E

FILED

NOV 02 2018

1110

Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,

v.

DARYL ROGERS,

Defendant.

No. 17-1-00097-3

COURT'S INSTRUCTIONS
TO THE JURY



SUPERIOR COURT JUDGE

DATED this 1ST day of November, 2018.

INSTRUCTION NO. 1

It is your duty to decide the facts in this case based upon the evidence presented to you during this trial. It also is your duty to accept the law from my instructions, regardless of what you personally believe the law is or what you personally think it should be. You must apply the law from my instructions to the facts that you decide have been proved, and in this way decide the case.

Keep in mind that a charge is only an accusation. The filing of a charge is not evidence that the charge is true. Your decisions as jurors must be made solely upon the evidence presented during these proceedings.

The evidence that you are to consider during your deliberations consists of the testimony that you have heard from witnesses and the exhibits that I have admitted during the trial. If evidence was not admitted or was stricken from the record, then you are not to consider it in reaching your verdict.

Exhibits may have been marked by the court clerk and given a number, but they do not go with you to the jury room during your deliberations unless they have been admitted into evidence. The exhibits that have been admitted will be available to you in the jury room.

One of my duties has been to rule on the admissibility of evidence. Do not be concerned during your deliberations about the reasons for my rulings on the evidence. If I have ruled that any evidence is inadmissible, or if I have asked you to disregard any evidence, then you must not discuss that evidence during your deliberations or consider it in reaching your verdict. Do not speculate whether the evidence would have favored one party or the other.

INSTRUCTION NO. 8

To convict the defendant of the crime of Child Molestation in the First Degree as charged in Count 1, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about or between January 1, 2006, and December 31, 2008, the defendant had sexual contact with J.R.O.;

(2) That J.R.O. was less than twelve years old at the time of the sexual contact and was not married to the defendant;

(3) That J.R.O. was at least thirty-six months younger than the defendant; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 9

To convict the defendant of the crime of Child Molestation in the First Degree as charged in Count 3, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about or between January 1, 2010, and December 31, 2010, on an occasion separate and distinct from Counts 4, 5, and 6, the defendant had sexual contact with J.R.O.;

(2) That J.R.O. was less than twelve years old at the time of the sexual contact and was not married to the defendant;

(3) That J.R.O. was at least thirty-six months younger than the defendant; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 13

To convict the defendant of the crime of Rape of a Child in the First Degree as charged in Count 2, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about or between January 1, 2010, and December 31, 2010, on an occasion separate and distinct from Counts 4, 5, and 6, the defendant had sexual intercourse with J.R.O.;

(2) That J.R.O. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;

(3) That J.R.O. was at least twenty-four months younger than the defendant; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 14

To convict the defendant of the crime of Rape of a Child in the First Degree as charged in Count 4, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about or between January 1, 2010, and December 31, 2010, on an occasion separate and distinct from Counts 2, 3, 5, and 6, the defendant had sexual intercourse with J.R.O.;

(2) That J.R.O. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;

(3) That J.R.O. was at least twenty-four months younger than the defendant; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 15

To convict the defendant of the crime of Rape of a Child in the First Degree, as charged in Count 5, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about or between January 1, 2010, and December 31, 2010, on an occasion separate and distinct from Counts 2, 3, 4 and 6, the defendant had sexual intercourse with J.R.O.;

(2) That J.R.O. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;

(3) That J.R.O. was at least twenty-four months younger than the defendant; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

INSTRUCTION NO. 16

To convict the defendant of the crime of Rape of a Child in the First Degree as charged in Count 6, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about or between January 1, 2010, and December 31, 2010, on an occasion separate and distinct from Counts 2, 3, 4, and 5, the defendant had sexual intercourse with J.R.O.;

(2) That J.R.O. was less than twelve years old at the time of the sexual intercourse and was not married to the defendant;

(3) That J.R.O. was at least twenty-four months younger than the defendant; and

(4) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Exhibit F

C
DATE: 11/1/18

17-1-00097-3

TIME: 4:48 PM

Do not disclose any information or state how the jury has voted.

JURY QUESTION

FILED

NOV 01 2018

5:08
Scott G. Weber, Clerk, Clark Co.

We have not come to a
concense on 4 of the counts.
How long must we deliberate?

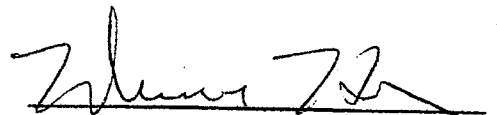

FOREMAN/ PRESIDING JUROR

Exhibit G

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Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,

v.

DARYL ROGERS,

Defendant.

No. 17-1-00097-3

VERDICT FORM 1 – COUNT 1

We, the jury, find the above-named defendant, WRITE IN "NOT GUILTY" OR "GUILTY"

of the crime of CHILD MOLESTATION IN THE FIRST DEGREE as charged in Count 1.

DATED this 1st day of NOVEMBER, 2018.

PRESIDING JUROR

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Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,
v.
DARYL ROGERS,
Defendant.

No. 17-1-00097-3

VERDICT FORM 2 – COUNT 2

We, the jury, find the above-named defendant, Guilty
WRITE IN "NOT GUILTY" OR "GUILTY"

of the crime of RAPE OF A CHILD IN THE FIRST DEGREE as charged in Count 2.

DATED this 2nd day of November, 2018.

Whitney R. Hill
PRESIDING JUROR

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,
v.
DARYL ROGERS,
Defendant.

No. 17-1-00097-3

VERDICT FORM 3 – COUNT 3

We, the jury, find the above-named defendant,

Guilty
WRITE IN "NOT GUILTY" OR "GUILTY"

of the crime of CHILD MOLESTATION IN THE FIRST DEGREE as charged in Count 3.

DATED this 2nd day of November, 2018.

Theresa R. Her
PRESIDING JUROR

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,
v.
DARYL ROGERS,
Defendant.

No. 17-1-00097-3

VERDICT FORM 4 – COUNT 4

We, the jury, find the above-named defendant, Guilty
WRITE IN "NOT GUILTY" OR "GUILTY"

of the crime of RAPE OF A CHILD IN THE FIRST DEGREE as charged in Count 4.

DATED this 1st day of November, 2018.

Wanda R. Hank
PRESIDING JUROR

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,
v.
DARYL ROGERS,
Defendant.

No. 17-1-00097-3

VERDICT FORM 5 – COUNT 5

We, the jury, find the above-named defendant, Guilty
WRITE IN "NOT GUILTY" OR "GUILTY"

of the crime of RAPE OF A CHILD IN THE FIRST DEGREE as charged in Count 5.

DATED this 1st day of November, 2018.

Theresa R. Hall
PRESIDING JUROR

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Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,

v.

DARYL ROGERS,

Defendant.

No. 17-1-00097-3

VERDICT FORM 6 – COUNT 6

We, the jury, find the above-named defendant, WRITE IN "NOT GUILTY" OR "GUILTY"

of the crime of RAPE OF A CHILD IN THE FIRST DEGREE as charged in Count 6.

DATED this _____ day of _____, 2018.

PRESIDING JUROR

Exhibit H

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Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,

v.

DARYL ROGERS,
Defendant.

No. 17-1-00097-3

SPECIAL VERDICT FORM 1 – COUNT 1

We, the jury, having found the defendant guilty of Child Molestation in the First Degree as charged in Count 1, answer the questions submitted by the court as follows:

QUESTION 1: Was the crime part of an ongoing pattern of sexual abuse of the same victim under the age of 18 years manifested by multiple incidents over a prolonged period of time?

ANSWER 1: _____ (Write "yes" or "no")

QUESTION 2: Did the defendant use a position of trust or confidence to facilitate the commission of the crime?

ANSWER 2: _____ (Write "yes" or "no")

DATED this 1st day of November, 2018.

PRESIDING JUROR

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Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,

v.

DARYL ROGERS,
Defendant.

No. 17-1-00097-3

SPECIAL VERDICT FORM 2 – COUNT 2

We, the jury, having found the defendant guilty of Rape of a Child in the First Degree as charged in Count 2, answer the questions submitted by the court as follows:

QUESTION 1: Was the crime part of an ongoing pattern of sexual abuse of the same victim under the age of 18 years manifested by multiple incidents over a prolonged period of time?

ANSWER 1: Yes (Write "yes" or "no")

QUESTION 2: Did the defendant use a position of trust or confidence to facilitate the commission of the crime?

ANSWER 2: Yes (Write "yes" or "no")

DATED this 2nd day of November, 2018.

William R. Harris
PRESIDING JUROR

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Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,

v.

DARYL ROGERS,
Defendant.

No. 17-1-00097-3

SPECIAL VERDICT FORM 3 – COUNT 3

We, the jury, having found the defendant guilty of Child Molestation in the First Degree as charged in Count 3, answer the questions submitted by the court as follows:

QUESTION 1: Was the crime part of an ongoing pattern of sexual abuse of the same victim under the age of 18 years manifested by multiple incidents over a prolonged period of time?

ANSWER 1: Yes (Write "yes" or "no")

QUESTION 2: Did the defendant use a position of trust or confidence to facilitate the commission of the crime?

ANSWER 2: Yes (Write "yes" or "no")

DATED this 2nd day of November, 2018.

[Signature]
PRESIDING JUROR

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Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,

v.

DARYL ROGERS,
Defendant.

No. 17-1-00097-3

SPECIAL VERDICT FORM 4 – COUNT 4

We, the jury, having found the defendant guilty of Rape of a Child in the First Degree as charged in Count 4, answer the questions submitted by the court as follows:

QUESTION 1: Was the crime part of an ongoing pattern of sexual abuse of the same victim under the age of 18 years manifested by multiple incidents over a prolonged period of time?

ANSWER 1: Yes (Write "yes" or "no")

QUESTION 2: Did the defendant use a position of trust or confidence to facilitate the commission of the crime?

ANSWER 2: YES (Write "yes" or "no")

DATED this 1st day of NOVEMBER, 2018.

William R. H.
PRESIDING JUROR

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Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,

v.

DARYL ROGERS,
Defendant.

No. 17-1-00097-3

SPECIAL VERDICT FORM 5 – COUNT 5

We, the jury, having found the defendant guilty of Rape of a Child in the First Degree as charged in Count 5, answer the questions submitted by the court as follows:

QUESTION 1: Was the crime part of an ongoing pattern of sexual abuse of the same victim under the age of 18 years manifested by multiple incidents over a prolonged period of time?

ANSWER 1: YES (Write "yes" or "no")

QUESTION 2: Did the defendant use a position of trust or confidence to facilitate the commission of the crime?

ANSWER 2: YES (Write "yes" or "no")

DATED this 1st day of November, 2018.

Wm R. Hahn
PRESIDING JUROR

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Scott G. Weber, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,

v.

DARYL ROGERS,
Defendant.

No. 17-1-00097-3

SPECIAL VERDICT FORM 6 – COUNT 6

We, the jury, having found the defendant guilty of Rape of a Child in the First Degree as charged in Count 6, answer the questions submitted by the court as follows:

QUESTION 1: Was the crime part of an ongoing pattern of sexual abuse of the same victim under the age of 18 years manifested by multiple incidents over a prolonged period of time?

ANSWER 1: _____ (Write "yes" or "no")

QUESTION 2: Did the defendant use a position of trust or confidence to facilitate the commission of the crime?

ANSWER 2: _____ (Write "yes" or "no")

DATED this _____ day of November, 2018.

PRESIDING JUROR

Exhibit I

1 IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF CLARK

3 _____
4 STATE OF WASHINGTON,)
5 Plaintiff,) No. 17-1-00097-3
6 v.) COA No. 53221-2-II
7 DARYL C. ROGERS, II,)
8 Defendant.)

9 _____
10 JURY TRIAL, VOLUME II

11 The Honorable Robert Lewis Presiding

12 October 29, 2018

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23 Transcribed by: Reed Jackson Watkins, LLC
24 Court-Approved Transcription
25 206.624.3005

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On Behalf of Plaintiff: COLIN P. HAYES
Clark County Prosecuting
Attorney's Office
P.O. Box 5000
Vancouver, Washington 98666-5000

On Behalf of Defendant: JEFFREY D. STAPLES
Attorney at Law
1014 Franklin Street
Vancouver, Washington 98660-3040

Also Present: DARYL C. ROGERS, II, Defendant
MONICA HERNANDEZ, VPD Detective

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DIRECT BY HAYES/J. OGLETREE

1 give voice answers.

2 Go ahead.

3

4 DIRECT EXAMINATION

5 BY MR. HAYES:

6 Q. Jazmyne, how do you spell your first name?

7 A. J-A-Z-M-Y-N-E.

8 Q. And what's your middle name?

9 A. Renee (phonetic).

10 Q. How old are you, Jazmyne?

11 A. I'm 19 now.

12 Q. When is your birthday?

13 A. It's June 30th, 1999.

14 Q. And where -- what city are you living in right now?

15 A. Vancouver, Washington.

16 Q. Do you have any brothers or sisters?

17 A. I have a sister and two brothers.

18 Q. Tell me about that. What are their names and ages?

19 A. I have two brothers. One is a sophomore in high school now

20 at Skyview. His name is Xavier. And I have a little

21 brother who is a sixth grader. His name is James. And a

22 sister I don't really see, who is also a sophomore. Her

23 name is Tamara (phonetic).

24 Q. And do each of you have the same sets of parents?

25 A. Just our mom. Different dad for my sister.

C E R T I F I C A T E

STATE OF WASHINGTON

)

) ss

COUNTY OF KING

)

I, the undersigned, do hereby certify under penalty of perjury that the foregoing court proceedings were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript; that I received the audio and/or video files in the court format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand
this 21st day of June, 2019.

Bonnie Reed, CET

Exhibit J

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Elizabeth R. Blackburn, CCR

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On Behalf of Plaintiff: COLIN P. HAYES

Clark County Prosecuting

Attorney's Office

P.O. Box 5000

Vancouver, Washington 98666-5000

On Behalf of Defendant: JEFFREY D. STAPLES, Attorney

1014 Franklin Street

Vancouver, Washington 98660-3040

Also Present: DARYL C. ROGERS, II, Defendant

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T R I A L

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CROSS BY STAPLES/OGLETREE

- 1 A. Not all the time. Just once or twice I can remember
2 actually seeing it.
- 3 Q. Okay. Now, you said that what prompted you guys to come
4 back from Alaska was, at least in part, that this man was
5 your stepdad, seemed to have located you?
- 6 A. Yes, sir.
- 7 Q. You think that Daryl may have been the one who told your
8 -- told your stepdad where you were; is that correct?
- 9 A. I think -- well, I know that my mom told me and said
10 that, that can be a possibility because they were
11 friends.
- 12 Q. They were really close, right?
- 13 A. James and Daryl, yes.
- 14 Q. Yeah. In fact, James named Daryl the godfather of your
15 youngest brother?
- 16 A. Yeah.
- 17 Q. Okay. So you've indicated previously that you're unsure,
18 foggy about the timeline that when you moved in with
19 Daryl; is that correct?
- 20 A. Yeah, I don't know when.
- 21 Q. In fact, you said before it could be fourth, fifth or
22 sixth grade?
- 23 A. Around then, yeah.
- 24 Q. Okay. In terms of the timeline for how long you believed
25 you lived with Daryl, when you were initially recalling

CROSS BY STAPLES/OGLETREE

1 it to the police, you said you thought it was for a year;
2 is that right?

3 MR. HAYES: Objection. Hearsay. It's not impeachment
4 at this point.

5 THE COURT: Overruled. Repeat the question.

6 Q. (By Mr. Staples) The question was: Do you recall
7 initially saying that it was for up to a year?

8 A. I did.

9 Q. Okay. Was that how long you believe it is now?

10 A. No.

11 Q. How long do you think you lived with them?

12 A. I don't know.

13 Q. Okay. Now, you stated on other occasions that you
14 thought that the sexual contact occurred frequently,
15 like, maybe three or four times per week during the
16 course of that what you thought initially was a year?

17 A. Was true.

18 Q. You've testified you don't remember if there was more
19 than one incident while you were living at the house with
20 Daryl in which he rubbed his penis on your thighs,
21 correct?

22 A. Can you repeat that?

23 Q. I'm sorry. My question was: You testified earlier you
24 don't know whether or not Daryl rubbed his penis on your
25 thighs more than one -- more than one time or if it was

REDIRECT BY HAYES/OGLETREE

1 very much.

2 Q. So you'd expressed at least that you didn't like Daryl?

3 A. That's what I told him a long time ago, yeah.

4 Q. Okay. Did you tell him that something had happened
5 between you and Daryl?

6 A. No, I just expressed that I didn't like him very much and
7 that he was weird.

8 Q. Defense asked you about a concussion, so you got that
9 during a basketball game?

10 A. Yes, sir.

11 Q. Did -- did the concussion in any way affect your ability
12 to know what the defendant did to you?

13 A. No.

14 Q. That time that you told us about yesterday, the very
15 first memory you have of something happening in the
16 Fisher Mill Apartments, did the defendant have a friend
17 over while that was happening?

18 A. I don't remember.

19 Q. Was there -- were there any -- were there any other
20 people in the room with you when that was happening?

21 A. No.

22 Q. So in regards to how long you think you may -- you and
23 your family might have lived with Daryl in the house, did
24 it feel like it was a long time?

25 A. Yes.

DIRECT BY HAYES/POINDEXTER

1 THE COURT: Hi. Welcome back. I hope you had a good
2 lunch and you're ready to continue with the examination
3 of this witness.

4 Q. (By Mr. Hayes) So when we left off, I think I was asking
5 you about talks you were having on the phone with the
6 defendant about moving back in with his family in
7 Vancouver. So after you -- that idea came up in
8 conversation with the defendant, did you talk to his
9 mother before finalizing those plans?

10 A. No.

11 Q. Who did you talk to, to finalize the plans to actually
12 move in with them?

13 A. Just him.

14 Q. Just the defendant. And how long did you and your kids
15 stay that the house with the defendant and members of his
16 family?

17 A. Just a few months.

18 Q. Do you have any idea how many?

19 A. We got there either March --

20 Q. March of what year?

21 A. 2010.

22 Q. Okay. So you say the end of March? Is that what you
23 said?

24 A. It -- it was -- it was the 10th of either March or April.

25 Q. Okay. 10th of either March or April, 2010. And do you

DIRECT BY HAYES/POINDEXTER

1 remember anything --

2 A. We left before fall.

3 Q. Before fall? Was it still summer when you left?

4 A. I believe so.

5 Q. Did -- do you recall having a birthday for any of your
6 children while you were still there in that house in
7 2010?

8 A. Xavier and Jazmyne's birthdays were both May and June. I
9 don't remember having any money to throw a party for
10 them, but their birthdays were during that time.

11 Q. Okay. And when you moved in, what was the understanding
12 regarding rent?

13 A. There was none.

14 Q. So did you guys discuss that at all, like the fact that
15 there wouldn't be rent or there would be, or was it
16 discussed at all?

17 A. It wasn't discussed. I was getting food stamps at the
18 time, so I put food in the house. So I brought groceries
19 and -- and cooked.

20 Q. Okay. But when you moved in, there was no formal
21 agreement about whether you would or wouldn't pay any
22 rent?

23 A. No.

24 Q. Before we talk more about the living situation there, do
25 you still recall the layout of the TV living room area in

DIRECT BY HAYES/POINDEXTER

1 car, but I eventually ended up being okay.

2 Q. You said you went to stay with your mom?

3 A. Yeah.

4 Q. Did you previously have much of a relationship with your
5 mom?

6 A. No.

7 Q. So was there any kind of argument or anything while you
8 were trying to get your things and leave?

9 A. We went back to the house a couple days after we left.
10 Me and Jaz went to get some of our stuff. And when we
11 were in the house, Daryl and Dee was in the house. We
12 had some words, and I remember both of them standing over
13 the top of me with Daryl right here and Dee right here.

14 Q. And was there an argument about them wanting the keys
15 back?

16 A. And I told them they'd get their key when I got my stuff.

17 Q. So that was -- so was there some kind of disagreement
18 about the timing of when you would give the key in
19 relation to when you were able to get your stuff?

20 A. Uh-huh.

21 Q. You have to answer yes or no.

22 A. Yes.

23 Q. And did either you or the defendant call the police at
24 that point?

25 A. Originally I thought he did, but then I remembered I

DIRECT BY HAYES/POINDEXTER

- 1 called the police because I was -- Jaz was standing in
2 the corner scared because one of them was blocking the
3 door and wouldn't let us leave.
- 4 Q. With the key?
- 5 A. With the key.
- 6 Q. Okay. So you --
- 7 A. And they were -- they were saying, "Well, you're not
8 going anywhere." And -- and matter fact, he made Dee
9 stand in front of the door.
- 10 Q. Okay.
- 11 A. So that's when I called the police because they wouldn't
12 let us leave.
- 13 Q. And after the police got there, did the police stick
14 around while you got your stuff and then ultimately left
15 the key?
- 16 A. Yes.
- 17 Q. And then have you seen the defendant -- have you talked
18 with defendant since that day?
- 19 A. Negative.
- 20 Q. So you said you left, and you came back to get some
21 things?
- 22 A. Uh-huh.
- 23 Q. You have to answer --
- 24 A. Yes. Sorry.
- 25 Q. It's all right. Have you seen the defendant since that

CROSS BY STAPLES/POINDEXTER

1 Q. And then you moved out, I believe your testimony was,
2 within a week or two later?

3 A. Correct.

4 Q. And then you came back sometime after that within -- I
5 think you said a matter of days or weeks to retrieve some
6 belongings?

7 A. Correct.

8 Q. That's when you had this argument that escalated to the
9 point where the police were called?

10 A. Correct.

11 Q. And you testified that Jazmyne was present for that
12 argument?

13 A. Yes.

14 Q. All right. Now, the discussion -- the disclosure that
15 the Jazmyne made to you that you testified to about
16 earlier, that was in the context of a discussion that she
17 and you were having about her behavior, correct?

18 A. Correct.

19 Q. You weren't happy with some of her behavior?

20 A. Correct.

21 Q. And you were telling her that if she -- she kept it up,
22 that she was going to get raped?

23 A. Correct.

24 Q. During the course of this discussion, the context of it
25 is that you -- not for the first time, but you had just

CROSS BY STAPLES/POINDEXTER

1 A. Yeah.

2 Q. Okay. So she was fine -- your testimony today is that
3 she was fine with it?

4 A. She did. Yep.

5 Q. She did what?

6 A. She wanted to go to Alaska to go stay with my sister.

7 Q. Okay. And the reason you answered it differently when I
8 interviewed in May is you misunderstood the question?

9 A. Maybe, yeah.

10 Q. Okay.

11 A. To get her away from him was part of it. But to get her
12 to change her whole behavior pattern --

13 THE COURT: Answered the question --

14 THE WITNESS: Was --

15 THE COURT: -- so now you need to wait for the next
16 question.

17 THE WITNESS: Yes, sir.

18 Q. (By Mr. Staples) You testified that the issue Jaz harming
19 herself, you didn't know anything about that until after
20 she'd already made these disclosures to you; is that
21 correct?

22 A. Correct.

23 Q. Okay. So and you testified about the arrangements
24 that -- part of your motivation in getting this night job
25 was so that you didn't have to pay for childcare during

CROSS BY STAPLES/POINDEXTER

- 1 the day?
- 2 A. And I didn't have to worry about anybody else watching my
- 3 kids during the daytime.
- 4 Q. Right.
- 5 A. I could watch them during the daytime.
- 6 Q. Right. And you testified that school -- on school
- 7 nights, bedtime's nine -- or you said before school time
- 8 or during school week bedtime for them was 9:00, and so
- 9 they'd already be in bed by the time you left for work?
- 10 A. Correct.
- 11 Q. Okay. Including Jazmyne?
- 12 A. Correct.
- 13 Q. Now, I was a little confused about your -- your testimony
- 14 about Daryl because the kids were in bed, so when you
- 15 were working, you didn't have any specific
- 16 responsibilities that related to the kids, other than,
- 17 say, not -- make sure the house didn't burn down?
- 18 A. Correct.
- 19 Q. And of Daryl's sister, Shatyra, is it accurate to say
- 20 that she didn't do anything? She would just lay around
- 21 the house all day? Is that accurate?
- 22 A. Correct.
- 23 Q. So she was around a lot?
- 24 A. Correct.
- 25 Q. Do you recall whether or not Daryl's parents, even though

C E R T I F I C A T E

STATE OF WASHINGTON)

) ss

COUNTY OF KING)

I, the undersigned, do hereby certify under penalty of perjury that the foregoing recorded court proceedings were transcribed under my direction as a court reporter, and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript, that I received the audio and/or video files in the court format, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of June, 2019.

Elizabeth R. Blackburn

Certified Court Reporter, No. 3414

State of Washington

Exhibit K

FILED

Court of Appeals

THE SUPERIOR COURT OF THE STATE OF WASHINGTON

State of Washington

IN AND FOR THE COUNTY OF CLARK

6/17/2019 11:20 AM

STATE OF WASHINGTON,

)

Plaintiff,

)

COA No. 53221-2-II

vs.

)

Cause No. 17-1-00097-3

DARYL C. ROGERS, II,

)

Defendant.

)

JURY TRIAL - VOLUME IV

The Honorable Robert Lewis Presiding

October 31, 2018

Transcribed by:

Reed Jackson Watkins, LLC

Court Certified Transcription

206.624.3005

A P P E A R A N C E S

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CROSS BY STAPLES/HERNANDEZ

1 Q. And you indicated -- is it correct that you indicated that
2 he said that he babysat them at least in the evenings on one
3 or two occasions?

4 A. Yes.

5 Q. Did he also, in response to your question about that,
6 indicate that when he did so that he would always have a
7 friend with him?

8 A. He did indicate that, yes.

9 Q. Regarding the length of time in which Amanda lived with him
10 after she moved back from Alaska, did you ask Defendant
11 about what length of time she lived with him?

12 A. Yes.

13 Q. And what did he indicate about that length of time?

14 A. A couple months.

15 Q. Okay.

16 A. Or three months. I don't know. I read it from the
17 transcript a few minutes ago.

18 Q. Okay. In the context of that question, were you asking
19 him -- telling him that -- that it was a year and he was
20 saying that it was only a couple months?

21 A. I don't remember. I'd have to look.

22 Q. You can refer to page 47 of your interview, Bates stamped
23 No. 269 -- or excuse me, 296. I'm looking at the top
24 several lines of the page, specifically his response on two
25 lines, 281 to 282.

CROSS BY STAPLES/PHELPS

1 conversation for -- that he said that he maybe one or two

2 times watched the -- them when the parents went out?

3 A. Yeah, I believe so.

4 Q. Would it also be consistent with your memory of that account

5 that he indicated that he only watched the kids with

6 somebody else and not alone?

7 A. I can't recall if he said that or not.

8 Q. Okay. Would it be helpful to you if you could refer to a

9 transcript for this conversation?

10 A. Sure. Yeah. Excuse me. Thank you.

11 Q. If I could refer you to page 12 of that transcript,

12 specifically his response at line 527.

13 A. Okay. Yeah, he did say that, that he would have a friend

14 with him when he would babysit.

15 Q. And you indicated in terms of the length of time that Daryl

16 indicated to you that Amanda lived when she got back from

17 Alaska, that that was a matter of a few months?

18 A. Yes.

19 Q. He said two or three months maybe but not longer than that?

20 A. I believe his estimate was three or four months but

21 definitely less than six months.

22 Q. If I could refer you to page 47 of that transcript,

23 specifically lines 2098 to 2100.

24 A. Yeah, at that point in our conversation he did say two to

25 three months. There was another portion where he said three

CROSS BY STAPLES/PHELPS

1 to four months or definitely less than six months, so it was
2 a lengthy conversation. There was times when he would talk
3 about something and then seemed to recollect better and --
4 and not change his statement but slightly modify it to -- to
5 comport with his memory.

6 Q. He was trying to estimate --

7 A. That's correct.

8 Q. -- this conversation you guys had with him in 2016, in
9 March 2016, asking him about something at that point that
10 was about six years prior?

11 A. That's correct.

12 Q. So if you refer to -- at one point in the conversation did
13 he say it was probably -- may have been less than two
14 months?

15 A. He may have.

16 Q. And if I could refer you to page 6, line 251.

17 A. Okay. Yeah, at that point in the conversation he said it
18 was less than two months.

19 Q. Yeah. And then on page 4 at line 273, 274 that -- actually
20 273 to 280, you have a little bit of a discussion about
21 whether it was two or three months; is that right?

22 A. Yes, that's correct.

23 Q. Okay. And maybe you're able to direct me to it. I'm not
24 seeing any portion in my review that indicates him saying it
25 could be as long as four months. Am I missing something?

DIRECT BY STAPLES/SHATYRA ROGERS

1 A. With Amanda it was J [REDACTED], Xavier, and Dougie -- James,
2 little James.

3 Q. Do you remember the approximate ages of the kids when they
4 moved in?

5 A. I couldn't say exactly.

6 Q. Were they school age?

7 A. Yes. I think the youngest one -- I don't think the youngest
8 one was in school. I think the oldest two, however, was in
9 school.

10 Q. Okay. How long did Amanda and her children stay there?

11 A. I would say no more than two months.

12 Q. Okay. Not 100 percent sure about --

13 A. Not 100 percent sure of the exact time they left, but it was
14 definitely for a short period of time.

15 Q. All right. So while they were living there, what were the
16 sleeping arrangements for everybody in the house?

17 A. I slept out in the living room on the couch facing the TV;
18 Amanda slept in the -- which was technically a formal dining
19 room, but we had it set up in a kind of sitting -- another
20 living-room style; she slept in that room. And then there
21 were bedrooms down the hallway.

22 If you walked down the hallway, the kids were in the
23 bedroom to the left, which was across from the bathroom.
24 And then if you continue down the hallway, Daryl was in the
25 master bedroom to the right and Dmechi (phonetic) and Davion

CROSS BY HAYES/SHATYRA ROGERS

- 1 A. Not specifically.
- 2 Q. And you think that Amanda and her kids came to stay with you
- 3 all for about two to three months?
- 4 A. Yes. Well, probably two, but, yes.
- 5 Q. Where did Amanda sleep in the house?
- 6 A. On the couch in the family room.
- 7 Q. So in the mornings, what time did you have to get to Lowe's
- 8 on days you were working?
- 9 A. 7:00.
- 10 Q. What time did you leave the work -- what time would you
- 11 leave the house by in the mornings?
- 12 A. Usually by 6:15 or 6:30.
- 13 Q. And what time would you get home afterward normally?
- 14 A. Usually 4:30 -- anywhere between 4:30 and 5 o'clock,
- 15 obviously depending on traffic.
- 16 Q. And you were working five days a week?
- 17 A. Yes, usually.
- 18 Q. So typically a full-time work schedule?
- 19 A. Typically.
- 20 Q. And you weren't limited to just a Monday through Friday. It
- 21 could have been any five days of the week?
- 22 A. Yes.
- 23 Q. And during the time that Amanda and her family were there,
- 24 did you ever leave the house for any social -- socially to
- 25 see friends, anything like that?

DIRECT BY STAPLES/DEMETRIUS ROGERS

1 James's children?

2 A. On occasion, once or twice. No more than -- no more than
3 that.

4 Q. Okay. Did you -- do you recall or do you know whether or
5 not Daryl ever babysat for the kids?

6 A. I can't say for sure. Maybe once or twice, but I couldn't
7 tell you with 100 percent certainty if he ever did.

8 Q. Do -- or did you live -- ever end up living in the same
9 house with Amanda and J [REDACTED]?

10 A. Yes, we did.

11 Q. So when that came to be, were you still living at that house
12 that you gave us the address for earlier?

13 A. We were.

14 Q. At the time that Amanda and J [REDACTED] came to live with you,
15 who was living in that house before they got there with you?

16 A. It was myself, Montrel, my brother, and my sister.

17 Q. And who -- was it just J [REDACTED] and Amanda moved in with you
18 guys, or were there more people?

19 A. It was both the two boys as well.

20 Q. Okay. So not James but Amanda and all three of the kids?

21 A. Yes.

22 Q. So once -- or when -- or do you recall when Amanda and her
23 kids moved in?

24 A. I can't say the exact date for sure, but I do recall that it
25 was after my birthday in 2010, and my birthday is at the end

DIRECT BY STAPLES/DEMETRIUS ROGERS

1 of March, so I would say apparently April's time frame.

2 Q. Okay. That's an estimate, though. It's a long time ago so
3 you can't be sure?

4 A. Correct.

5 Q. So once Amanda and J. [REDACTED] moved in, can you tell me what
6 the sleeping arrangements were in the house?

7 A. So my sister stayed in the living room, but I was closest to
8 the back door. She slept on the couch; I was facing the TV.
9 Amanda stayed in the family room right at the front door. I
10 believe the kids stayed in the first -- so there's a hallway
11 in the house. They stayed in the first room on the left.
12 Myself and Montrel stayed on the last room on the left, and
13 my brother stayed in the last room on the right.

14 Q. Okay. So how many bedrooms are in the house in total?

15 A. Three bedrooms.

16 Q. Okay. How long -- sorry. Actually, I'm going to --

17 MR. STAPLES: May I approach the witness?

18 THE COURT: Yes, you may.

19 Q. (By Mr. Staples) I'm showing you what's been admitted for
20 illustrative purposes as Exhibit No. 13. Have you ever seen
21 this before, the drawing I mean?

22 A. I have not seen this drawing personally, but it looks
23 very --

24 Q. Did I ever tell you I was going to show you a drawing?

25 A. No.

DIRECT BY STAPLES/DEMETRIUS ROGERS

1 Q. Okay. Do you have any idea what it's based on, what appears
2 in front of you, as to what it's a drawing of?

3 A. 2104, at the house we lived at.

4 Q. Okay. Does the drawing appear to you to accurately reflect
5 the layout of the house at that time, or is there anything
6 that you would change about it?

7 A. The rooms look bigger but overall, yes, they're -- it's
8 fairly accurate.

9 Q. Okay. Problem with scale, maybe?

10 A. Yeah, definitely.

11 Q. Okay. In terms of the general positioning of the rooms and
12 their connectedness to each other, is that accurate?

13 A. Yes.

14 Q. Okay. So how long did Amanda and her kids live there, as
15 best as you can recall?

16 A. Couldn't have been more than a couple months at most. I do
17 remember them being -- I can't say for sure when they left,
18 but I feel like it was before the summer started. Or I -- I
19 know the weather was nice, but it wasn't, like, mid-summer.
20 I believe I was still in school by the time they left.

21 Q. You don't think you'd finished the school year yet?

22 A. No.

23 Q. So let's talk about what you were doing during that time
24 frame. You were still in school, I assume, based on that
25 answer?

DIRECT BY STAPLES/DEMETRIUS ROGERS

1 A. Yes.

2 Q. And how old were you, best estimate?

3 A. 16.

4 Q. What grade do you think that put you in?

5 A. So actually had just turned 17. That was -- I do remember
6 it clearly; I was a junior in high school.

7 Q. Okay. What high school did you attend?

8 A. I went to Evergreen High School.

9 Q. Did you also do the Running Start program?

10 A. I did.

11 Q. So what did your school schedule look like in terms of the
12 hours during the week you attend school?

13 A. So because I was doing full time when they start, I spent a
14 majority of my time at Clark College. So I would have two
15 classes in the morning every day, one at 8:00 -- one at 08,
16 another at 09. And then on Tuesdays and Thursdays, I would
17 have another class in the afternoon around 1300, 1:00 p.m.

18 MR. STAPLES: Sorry, Judge. Can we interrupt for a
19 second? I'm having a hard time hearing him.

20 THE COURT: Yeah, why don't you hang on just a second. Go
21 ahead and repeat your answer.

22 A. So every morning I had two classes, one at 08, another at
23 09. And on Tuesdays and Thursdays, I would have another
24 class around 1300. And then I was also in band, so I would
25 have practice, go back to the high school for band class,

DIRECT BY STAPLES/DEMETRIUS ROGERS

1 usually in the afternoon.

2 Q. (By Mr. Staples) So this wasn't, like, a -- because you
3 were doing the Running Start, it doesn't sound like it's a
4 typical high school schedule where you show up at 8:00 and
5 leave at 3:30.

6 A. Correct.

7 Q. So when you're not at one of your classes -- and you
8 mentioned being in band as well?

9 A. Yes, I was.

10 Q. So if you're not in one of your classes or at band during
11 the day, where would you go?

12 A. During the day, because most of my friends were still at the
13 high school, I was just usually spending time at home.

14 Q. Okay. I don't know if you said what time band practice was
15 and how often and when it would last until?

16 A. So at this time it was parade season, so band practice, we
17 would practice about two to three times a week for about an
18 hour or two at most for the rehearsals.

19 Q. Okay. And what time of the day would that be?

20 A. The rehearsals were always in the evening after -- after
21 school, so that year I believe we were starting rehearsals
22 around 4:00, 5:00 p.m.

23 Q. So what was your social life like back then? Did you have
24 friends that you hung out with? Did you have other
25 extracurriculars?

DIRECT BY STAPLES/DOUGLAS

- 1 A. Yes.
- 2 Q. Do you know someone named J [REDACTED] Q [REDACTED]?
- 3 A. Yes, sir, I do.
- 4 Q. Can you tell me how you know those two people?
- 5 A. I briefly lived in the house with them when I was about 19
- 6 years old for a month and a half or two.
- 7 Q. Do you recall whether that was the first time you met them
- 8 is when they (inaudible)?
- 9 A. I met them previously at the Fisher Mills [sic], like one --
- 10 one time, maybe twice, but it was a small interaction, so I
- 11 really don't have too extensive history with them prior to
- 12 that.
- 13 Q. Okay. Do you remember approximately -- well, let me back up
- 14 for a second. The house that you lived with them in, I
- 15 think you said you lived with them for a period of time?
- 16 A. Yes.
- 17 Q. So what house is that?
- 18 A. 2104 off of 98th and Burton.
- 19 Q. And before they came to live with you, who lived in the
- 20 house besides yourself?
- 21 A. Me, Daryl, Shatyra, and Demetrius.
- 22 Q. Okay. So when you say those people's names, can you give me
- 23 their full names?
- 24 A. Oh, Daryl Rogers, Demetrius Rogers, Shatyra Rogers.
- 25 Q. Okay. What period of time did you live in that house?

DIRECT BY STAPLES/DOUGLAS

1 A. 2009 to probably -- like, mid-2009 to probably, like, the
2 end of 2010.

3 Q. All right. Now, do you remember when Amanda and J [REDACTED]
4 came to live with you?

5 A. I recall it was roughly around, like, the middle or end to
6 March to about the beginning of May. She wasn't there for
7 too long, about six weeks to two months.

8 Q. Was that in 2010?

9 A. Yes, sir.

10 Q. Okay. Now, when J [REDACTED] and Amanda moved in, was that the
11 makeup of the house as you described it? Everyone who you
12 said earlier already lived there?

13 A. Yes, sir.

14 Q. Was it just Amanda and J [REDACTED] moved in or were there other
15 people that moved in with them?

16 A. Yes, it was J [REDACTED], Amanda, and also her two additional
17 children, James and Xavier.

18 Q. Do you recall approximately the ages of the children,
19 J [REDACTED], James, and Xavier?

20 A. J [REDACTED] was probably, like, 10 or 11. James was probably,
21 like, 4. I know he wasn't going to school. And Xavier was
22 probably 6 or 7.

23 Q. And you stated -- I think you may have said already that you
24 were 19 at this time?

25 A. Yes, sir.

DIRECT BY STAPLES/DOUGLAS

1 A. Yes.

2 Q. -- have day care for him or anything?

3 A. No, he was home with Amanda.

4 Q. You estimated, I believe, earlier that -- one and a half to
5 two months in terms of the time frame that she lived there;
6 is that accurate?

7 A. Yes, sir.

8 Q. And it's fair to say this far removed from the event it's an
9 estimate on your part?

10 A. Yes.

11 Q. What, if anything, do you remember about the circumstances
12 of Amanda moving out?

13 A. I know that when she moved out it was kind of a messy
14 situation. She got upset -- I mean, she called the cops,
15 you know, yelling.

16 Q. Were you present for this?

17 A. Yes, I was.

18 Q. I'm not going to ask you to tell me what anyone said
19 specifically (inaudible), but I'm wondering if you can tell
20 me what the topic or what the subject of the argument was.

21 A. It was revolving around rent, I believe. Like, she wasn't
22 paying rent or she owed some back money to Daryl's mom. And
23 I guess when it was time to kind of, you know, pay the rent
24 somehow, you know, people were on disagreements in regards
25 to that and she went -- you know, so really didn't have all

REDIRECT BY STAPLES/DOUGLAS

- 1 A. Yes.
- 2 Q. Was this a short period of time?
- 3 A. Yes.
- 4 Q. Was it a long time ago?
- 5 A. Yes.
- 6 Q. Okay. The stuff that you're testifying to today, is it
- 7 stuff that you remember?
- 8 A. Yes.
- 9 Q. The mini fridge that was in Daryl's room, did that have food
- 10 and ice cream and stuff in it, or does -- or what would it
- 11 have in it?
- 12 A. It was all water. Daryl doesn't eat ice cream and stuff.
- 13 He's just -- it was a lot of water.
- 14 Q. Does Daryl have a reputation for that?
- 15 A. What, drinking a lot of water?
- 16 Q. Mm-hmm.
- 17 A. Yes.
- 18 Q. So the access to the water, I mean, was this something that
- 19 Daryl hoarded for himself or were other people in the house
- 20 free to gather -- get water from there?
- 21 A. It's kind of his, like, personal water. It was like, you
- 22 know, got his water in his mini fridge, you know what I
- 23 mean?
- 24 Q. Yeah. You're -- are you still close friends with Daryl?
- 25 A. Oh, yes.

1 Q. Do you see him as much as you did back then when you were
2 living together?

3 A. No, I don't.

4 Q. Okay.

5 MR. STAPLES: All right. No further questions.

6 THE COURT: Recross.

7 MR. HAYES: Nothing.

8 THE COURT: Can the witness be excused, then?

9 MR. STAPLES: Yes, he can.

10 THE COURT: All right. You're free to go. Don't discuss
11 your testimony with other potential witnesses.

12 Your next witness?

13 MR. STAPLES: Your Honor, I think we'll have to have a
14 conference outside the presence of the jury.

15 THE COURT: All right. We're going to take a brief break,
16 then. And close your notepads; leave them there in your
17 chairs. And don't discuss the case among yourselves or with
18 anyone else.

19 (Jury absent)

20 THE COURT: So you need to have a conference with me or
21 your client?

22 MR. STAPLES: Well, I'll step back, with the Court's
23 permission, if we can have five minutes together just to
24 make sure we have a chance to talk now about his decision to
25 testify. And then assuming he chooses to testify or not

DIRECT BY STAPLES/DARYL ROGERS

1 calling.

2 Q. Was the last thing you said cold call?

3 A. Cold calling, yeah. Cold call, that wasn't his name; that's
4 what me and Montrel left to do.

5 Q. Okay. You mean call people for the internship?

6 A. Yes. Well, we called it cold call- -- that's what the
7 internship called it, cold calling, but you would
8 essentially go and knock on people's doors.

9 Q. Oh, okay.

10 A. Yeah.

11 Q. During the time that Amanda and her children lived at the
12 house with you, was there ever any occasion in which you
13 were alone in the house with J [REDACTED]?

14 A. Never.

15 Q. Was there ever any occasion in which you were alone in a
16 room with J [REDACTED]?

17 A. No.

18 Q. How long do you recall -- or if you recall -- did Amanda and
19 her children live at the house with you?

20 A. I do not have exact dates because it's been quite a while,
21 but I usually try to navigate things from my past based on,
22 like, important dates. So my brother's birthday was
23 [REDACTED]; I know that they were not there for my brother's
24 birthday. And I got into a car accident on June 8th of that
25 year, and she -- that was a few days after she left the

DIRECT BY STAPLES/DARYL ROGERS

1 house.

2 Q. Okay. So sometime between March 23rd and June 8th?

3 A. Yes, sir.

4 Q. But not necessarily that whole time?

5 A. Say that again.

6 Q. I said, but not necessarily that whole time?

7 A. That she was there? No. Not -- I'm not sure. I know for a
8 fact she wasn't there on -- before my brother's birthday or
9 on my brother's birthday. I know that she left a few days
10 before my car accident.

11 Q. Okay. What, if anything, do you remember about the
12 circumstances of her leaving?

13 A. It was tumultuous at best.

14 Q. All right. What -- was there a dispute?

15 A. Yes, sir.

16 Q. Can you tell me what the -- what caused the dispute without
17 telling me what anyone said specifically?

18 A. The dispute, it started over -- it started over the rent.
19 She -- her -- my mother asked her for the rent; they didn't
20 agree on it. At the time I was not -- she -- she then gave
21 me a call because I was out and about. She was venting to
22 me. I stopped her from venting because I felt like she was
23 disrespecting my mother. She hung up on me. When I got
24 home, she was no longer there.

25 She came back about a week and a half or two weeks

DIRECT BY STAPLES/DARYL ROGERS

1 later, and when she started removing her stuff, I asked for
2 the key back before she left. She -- it became an issue
3 about her giving the key back before she left. She called
4 the police; the police showed up, separated us, got each
5 person's story. Stayed there for her to get her stuff, made
6 sure I got the key back, and went about their way.

7 Q. So some clarification questions here for you. You said that
8 your recollection is that they left a few days before you
9 were in this car accident, which I believe you said was
10 June 8th?

11 A. Yes, sir.

12 Q. Now, when you say they left, is that them coming back for
13 the stuff, or is that the -- when they were no longer there?

14 A. So them coming back for the stuff, so the day the police was
15 called, a few days later I got into a car accident.

16 Q. Okay. So based on what you said, is it true, then, that
17 there's actually -- you said a week or two before that where
18 they weren't actually living there?

19 A. Yes, sir.

20 Q. Okay. Now, who do you remember being present during this
21 argument you had at the house where they come back for the
22 stuff and the police are called?

23 A. So my sister was there when it started, but she was on her
24 way to work. Me and Montrel were there. We were actually
25 trying to get prepared to leave the house to go to do some

C E R T I F I C A T E

STATE OF WASHINGTON

)

) ss

COUNTY OF KING

)

I, the undersigned, do hereby certify under penalty of perjury that the foregoing court proceedings were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript; that I received the audio and/or video files in the court format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand
this 14th day of June, 2019.

Bonnie Reed, CET

Exhibit L

1 THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF CLARK

3 _____
4 STATE OF WASHINGTON,)
5 Plaintiff,) COA No. 53221-2-II
6 vs.) Cause No. 17-1-00097-3
7 DARYL C. ROGERS, II,)
8 Defendant.)
9 _____

10 JURY TRIAL - VOLUME V

11 The Honorable Robert Lewis Presiding

12 November 1, 2018
13 _____
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24 Transcribed by: Reed Jackson Watkins, LLC
25 Court Certified Transcription
206.624.3005

A P P E A R A N C E S

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On Behalf of Plaintiff:

COLIN P. HAYES

Clark County Prosecuting Attorney's Office

P.O. Box 5000

Vancouver, Washington 98666-5000

On Behalf of Defendant:

JEFFREY D. STAPLES

Attorney at Law

1014 Franklin Street

Vancouver, Washington 98660-3040

I N D E X O F P R O C E E D I N G S

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CLOSING ARGUMENT - STAPLES

1 person, Lakendra, and it's a conflicting story about when
2 the disclosure happened.

3 Another key set of points I want to make, as we all know,
4 Jazmyne didn't make the allegations for years. Now, the
5 prosecutor is going to tell you this is completely expected.
6 This -- as Maureen Garrett said, this is a common phenomenon
7 with these kinds of cases, but just because it's common
8 doesn't have to mean that we don't consider the implications
9 of that when we are evaluating whether or not the prosecutor
10 has met their burden.

11 So because she hadn't made these allegations for years, we
12 have to ask why, and one of the reasons it was reported was,
13 well, she didn't want to make her family homeless. Well, I
14 purport to you that that doesn't make a lot of sense. For
15 one thing, the initial allegation -- or the allegation back
16 from Fisher Mill Apartments, that (inaudible) for a totally
17 unrelated reason, not her mom's (inaudible) to get away from
18 the abusive stepfather, and she didn't say anything. She
19 obviously didn't say anything because Amanda brings her back
20 to live in the house with Daryl years later.

21 So when she lives in the house with them, they're only
22 there for a very short period of time. They leave after
23 that short period of time for unrelated reasons, and she
24 still says nothing. So testimony about when they leave
25 is -- and this is basically the late spring, like, May or

CLOSING ARGUMENT - STAPLES

1 June of 2010, and this gets reported to police beginning of
2 2016. So we're talking almost six years in which she had
3 nothing to do with Daryl.

4 So what's the motivation? Why this idea that, oh, we're
5 going to make us homeless, but we're already homeless. They
6 already got kicked -- or left this house, and we're homeless
7 because of this dispute related to Daryl. As I said,
8 Jazmyne's counsel testified that delayed reporting is
9 common. What that does not equal is that every delayed
10 report is true. Just because delayed reporting is something
11 that victims of childhood sexual trauma do, that it is
12 common, does not mean that every delayed report is true.
13 Those are not equivalencies.

14 The delayed reporting makes it extremely difficult to
15 evaluate the truth of her claims. That's just true. No
16 one's going to dispute that. The fact that this is six and
17 now eight years ago and ten to twelve years ago makes this
18 much more difficult, and the prosecutor's going to get up
19 and say that's not his fault. I guess that's true, but it
20 doesn't matter.

21 You're not being asked to make excuses or to lower the bar
22 because the case is difficult. And we're not blaming
23 anybody for not bringing things up earlier. We're just
24 saying, this is a fact that it is difficult to evaluate to
25 determine the truth of an allegation when we're looking at

CLOSING ARGUMENT - STAPLES

1 something that happened 12 years ago as opposed to something
2 that happened more recently, and that's a fact that we have
3 to deal with.

4 One of the things that delayed -- that the delay causes is
5 that it can cause -- affect people's memories because it's a
6 long time ago. And Jazmyne had significant memory problems.
7 What are some of them? She can't remember lots of
8 significant details. She can't remember how old she was
9 when any of these things happened, called ranges of time, in
10 some cases multiple years. She can't remember exactly what
11 years they took place, what grades she was in.

12 How many certain types of things happened? She -- back at
13 the Fisher Mill, she can't say how many times Daryl babysat,
14 whether this was only one time or whether there were
15 actually multiple times. In 2010, she can't say, was there
16 more than one time in which there was penetration? Was
17 there more than one time in which he allegedly came on her
18 thigh? Was there more than one -- or how many times was
19 there oral sex? Was Daryl circumcised? When asked about
20 this, she said she didn't know, but she theorized possibly
21 circumcised -- or possibly uncircumcised. We know that's
22 not the case; Daryl is circumcised.

23 How long did she live with Daryl? She agreed that
24 initially when she reported this she said that she -- this
25 was over a year, and during that year, this happened four or

CLOSING ARGUMENT - STAPLES

1 fact that she told Kendra before, but, again, the disclosure
2 to Kendra is not well established because it's only coming
3 from her best friend who disagrees with the timing of it,
4 and Jazmyne's saying that there was an initial disclosure to
5 her years ago back in middle school and Kendra says that's
6 not the case.

7 Daryl has adamantly denied these allegations. He was
8 cooperative with the police. It's significant that he went
9 in for not just one, not just two, but three lengthy
10 interviews. I asked the detectives, "Did Daryl answer all
11 your questions?" "Yes, answered all of our questions."

12 He was cooperative with the police, and the prosecutor, in
13 cross-examining Daryl, went through the transcripts of his
14 previous testimony looking for things (inaudible) spot
15 inconsistency, and I submit to you that exchange
16 demonstrated no inconsistency.

17 He's make- -- this is an interview he gave two years ago,
18 2016, when the allegations first serviced [sic] -- surfaced
19 about incidents between 8 and 12 years ago, and as we stand
20 here today -- or yesterday, rather, when he was on the
21 stand, there was nothing inconsistent about his testimony.
22 And the things that he testified to were corroborated by the
23 outside circumstances.

24 So the detectives, when they were questioning him, they
25 bring out to him that this happened over the course of a

CLOSING ARGUMENT - STAPLES

1 year, right? And they get that information simply from
2 Jazmyne, who said initially she thought it was a year.
3 Well, what does Daryl tell them? "Nope, that can't be the
4 case; it's only about two months, two to three months, two
5 to four months," as he initially says it. He's trying to
6 narrow down the timeline over time. He says, "No,
7 definitely way shorter than that."

8 So there's already something that he was purporting
9 accurately all the way back then that initially they got
10 wrong. And all these exchanges about the idea that -- that
11 he was making up after the fact this idea that he was never
12 alone with her back at Fisher Mill, that he never babysat
13 the children alone. Well, he told the police that in these
14 interviews, and the prosecutor went to this passage which he
15 thought showed that he was talking about her in another
16 context. But I submit to you that reading that whole
17 passage, it's very clear what he is saying. That they had
18 asked him -- he told them earlier that he was with -- that
19 he had somebody with him when he babysat.

20 They didn't ask him if it was -- who it was, and then they
21 asked him, "Did you babysit for anybody else?" He says,
22 "Yes, I babysat for -- oh, you know who it was,
23 actually -- " first he would come to Fisher Mill to her
24 house, "her" being Amanda. So this is the name that he
25 gives them, and he gives them their name, he tells them who

C E R T I F I C A T E

STATE OF WASHINGTON

)

) ss

COUNTY OF KING

)

I, the undersigned, do hereby certify under penalty of perjury that the foregoing court proceedings were transcribed under my direction as a certified transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability, including any changes made by the trial judge reviewing the transcript; that I received the audio and/or video files in the court format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand
this 14th day of June, 2019.

Bonnie Reed, CET

Exhibit M

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF CLARK

3 -----
4 STATE OF WASHINGTON,)

5 Plaintiff,) No. 17-1-00097-3

6 vs.) COA No. 53221-2-II

7 DARYL C. ROGERS, II,)

8 Defendant.)

9 -----
10 JURY TRIAL, VOLUME VI

11 The Honorable Robert Lewis Presiding

12 November 2, 2018

13 -----
14 CONVICTION AFTER TRIAL HEARING

15 The Honorable Robert Lewis Presiding

16 December 21, 2018

17 -----
18 SENTENCING HEARING

19 The Honorable Robert Lewis Presiding

20 January 23, 2019

21 -----
22 TRANSCRIBED BY: Marcia Kladek, CET

23 Reed Jackson Watkins, LLC

24 Court-Approved Transcription

25 206.624.3005

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A P P E A R A N C E S

On Behalf of Plaintiff: COLIN P. HAYES
Clark County Prosecuting
Attorney's Office
P.O. Box 5000
Vancouver, Washington 98666-5000

On Behalf of Defendant: JEFFREY D. STAPLES, Attorney
1014 Franklin Street
Vancouver, Washington 98660-3040

Also Present: DARYL C. ROGERS, II, Defendant

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E X H I B I T I N D E X

NO.	DESCRIPTION	ADMITTED
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1 ability to turn this mic on as well?

2 THE COURT: Andrea, is the -- can you unlock the camera and
3 turn on the microphone for the witness stand?

4 MR. HAYES: State calls Nancy Druckenmiller.

5 THE COURT: Come forward.

6 Do you swear or affirm that any testimony you give in this
7 hearing will be the truth, the whole truth, and nothing but
8 the truth, so help you?

9 THE WITNESS: I do.

10 THE COURT: Please be seated then.

11 Now that you're seated, please state your name in full,
12 then spell your last name for the court's records.

13 THE WITNESS: Nancy Druckenmiller. My last name is spelled
14 D-R-U-C-K-E-N-M-I-L-L-E-R.

15 THE COURT: All right. Counsel?

16

17 NANCY DRUCKENMILLER: Witness herein, having first been
18 duly sworn on oath, was examined
19 and testified as follows:

20

21 D I R E C T E X A M I N A T I O N

22 BY MR. HAYES:

23 Q. Ms. Druckenmiller, how are you currently employed?

24 A. I work for the Clark County Sheriff's Office as
25 identification specialist.

DIRECT BY HAYES/DRUCKENMILLER

1 Q. And what are your duties in that role?

2 A. To identify any persons whose identity is in question,
3 utilizing different programs. And part of that is providing
4 certified copies of booking photos and booking prints. I
5 have also been trained in how to compare fingerprints for the
6 ten prints or the JMSs. And I also do photo lay-downs for
7 criminal justice as they request it.

8 MR. HAYES: Your Honor, State moves to admit
9 Identifications 3 through 8 as self-authenticating certified
10 court documents.

11 THE COURT: 3 through 8, you said?

12 MR. HAYES: Correct.

13 THE COURT: Do you have any objections?

14 MR. STAPLES: Not as to their admissibility as
15 self-authenticating documents for purposes of sentencing.

16 THE COURT: 3 through 8 are admitted.

17 (Exhibits 3 through 8 admitted for sentencing hearing)

18 Q. (By Mr. Hayes) Ms. Druckenmiller, just briefly, what is your
19 training regarding fingerprint analysis?

20 A. In October 2006, I had a one-week training with Western
21 Identification Network, where they covered in learning what
22 fingerprints were, how to read the patterns, the ridges, what
23 type of ridges, and being able to compare the prints. We did
24 actual comparisons of -- or did comparisons of actual
25 fingerprints. And at the end, we had to take a test and be

DIRECT BY HAYES/DRUCKENMILLER

1 certified as we passed.

2 April of 2007, I took about a half-day class on how to roll
3 fingerprints and the rolling of fingerprints. Again, we
4 covered the different parts of fingerprints, patterns and
5 types.

6 And then, in May of 2007, I had a two-and-a-half day
7 training at Washington State Patrol to qualify for operating
8 the APIs computer, which is the automated fingerprint
9 identification system. In those two-and-a-half days, again,
10 we covered the different prints and learned how to be able to
11 compare them against the prints in the computer. And then
12 I've had a couple other trainings with the APIs computer and
13 when we upgraded to the APIs computer.

14 And I've taken a couple workshops and conferences in 2010
15 and 2015 on fingerprints.

16 Q. How long have you been working in fingerprint analysis in the
17 Clark County Sheriff's Office?

18 A. I started in identification August of 2006.

19 Q. And, ballpark estimate, how many fingerprint comparison
20 analysis cases have you worked on in that time?

21 A. I've kind of gone back through some of my past stat reports,
22 and I pretty much average about 250 a year or more. That's
23 not -- not including those that I compared in the APIs
24 computers.

25 Q. Are you familiar with the database the Clark County Sheriff's

DIRECT BY HAYES/DRUCKENMILLER

1 Office uses to store and maintain fingerprints taken in the
2 jail?

3 A. Yes, I am.

4 Q. How does Clark County Sheriff's Office maintain those rec- --
5 those fingerprint records?

6 A. That would be the Crossmatch Livespan computer. And
7 fingerprints are taken on that computer, creating electronic
8 data for them. They are stored in that computer as such.
9 And from that computer, it's also transmitted -- those same
10 prints are transmitted to Washington State Patrol for
11 processing. And once they process them, approve and process
12 them, then the same prints also go up to the FBI for
13 processing.

14 Q. Fingerprints and booking photos, are they taken at the time
15 of booking?

16 A. They should be, yes.

17 Q. And they are stored shortly thereafter in the computer --

18 A. As soon as the prints are taken on the computer, they are
19 stored in that computer.

20 Q. And does the sheriff's office take prints and booking photos
21 in the regular course of business?

22 A. I'm sorry. What?

23 Q. Does the sheriff's office take booking prints and photos in
24 the regular course of business?

25 A. Yes, it is. Yes, they do.

DIRECT BY HAYES/DRUCKENMILLER

1 Q. I'm going to hand you Identification Number 2. Look through
2 those documents. Let me know if you were the one who
3 certified them.

4 A. Yes. These are copies that I had certified, that I had
5 pulled from the two different computer systems.

6 Q. These are prints and a booking photo pertaining to a booking
7 on December 30th, 2017; is that accurate?

8 A. That is correct.

9 Q. Pertaining to Daryl Rogers?

10 A. Daryl Craig Rogers, yes. And in this case, the prints were
11 taken on January 3rd.

12 Q. Okay. January 3rd.

13 MR. HAYES: State moves to admit ID 2.

14 THE COURT: Any objection?

15 MR. STAPLES: No.

16 THE COURT: 2 is admitted.

17 (Exhibit 2 admitted for sentencing hearing)

18 Q. (By Mr. Hayes) I'm next going to hand you Identification
19 Number 1. Can you take a look at those and let me know if
20 you were the one who certified those documents?

21 A. Yes. These are the copies I certified, pulling from the two
22 different systems.

23 Q. And these are fingerprints and a booking photo pertaining to
24 Daryl Craig Rogers from a booking that occurred on
25 November 2nd, 2018?

DIRECT BY HAYES/DRUCKENMILLER

1 A. That is correct.

2 MR. HAYES: State moves to admit ID 1.

3 MR. STAPLES: No objection.

4 THE COURT: 1 is admitted.

5 (Exhibit 1 admitted for sentencing hearing)

6 Q. (By Mr. Hayes) So as part of this case, did you compare
7 those two sets of booking prints of Daryl Craig Rogers to two
8 different judgment and sentences?

9 A. Yes.

10 Q. First one I'm going to hand up, pertaining to Case Number
11 05800471-7, is this one of the judgment and sentences you
12 reviewed?

13 A. Yes, it is.

14 Q. Would it be fair to say that, due to the poor quality of the
15 prints, you were not able to make any comparison as to the
16 prints on that judgment and sentence?

17 A. That is correct.

18 Q. I'm going to hand you up Identification Exhibit 6 pertaining
19 to 07800221-4. Were you able to make comparisons to the
20 thumb prints on that judgment and sentence?

21 A. Yes, I was. I was able to compare prints of the left thumb
22 on the -- was it 2017 -- 2017 set of prints and the left
23 thumb on the 2018 set of prints.

24 Q. And what were your conclusions regarding those?

25 A. I was able to determine that all three sets of prints were

C E R T I F I C A T E

STATE OF WASHINGTON

)

) ss

COUNTY OF KING

)

I, the undersigned, do hereby certify that the foregoing recorded statements, hearings and/or interviews were transcribed under my direction as a transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of June, 2019.

Marcia Kladek, CET

Exhibit N



Daryl Rogers <drogers5464@gmail.com>

Records Request :: W011010-082918

CRESA 9-1-1 <cresa@mycusthelp.net>

Wed, Sep 12, 2018 at 10:15 AM

To: "drogers5464@gmail.com" <drogers5464@gmail.com>

--- Please respond above this line ---



09/12/2018

Daryl Rogers

RE: PUBLIC RECORDS REQUEST of 8/29/2018, Reference # W011010-082918

Dear Daryl,

CRESA received a public records request from you on 8/29/2018 related to the incident(s) located at: 2104 NE 98th Avenue
Vancouver, WA 98664

CRESA has completed the necessary research and determined there are no records responsive to your request. Your request is now considered withdrawn.
If additional information becomes available that may allow CRESA to locate the records you are seeking, please re-submit a new request.

Sincerely,

CRESA Administrative Services

To monitor the progress or update this request please log into the CRESA PUBLIC RECORDS SYSTEM.



Daryl Rogers <drogers5464@gmail.com>

Records Request :: W011010-082918

CRESA 9-1-1 <cresa@mycusthelp.net>

Wed, Sep 12, 2018 at 10:19 AM

To: "drogers5464@gmail.com" <drogers5464@gmail.com>

--- Please respond above this line ---



09/12/2018

Daryl Rogers

RE: PUBLIC RECORDS REQUEST of 8/29/2018, Reference # W011010-082918

Dear Daryl,

CRESA received a public records request from you on 8/29/2018 related to the incident(s) located at: 2104 NE 98th Avenue
Vancouver, WA 98664

Please note that since the incident(s) occurred more than six (6) years ago, there are no available records. In accordance with Washington State records retention guidelines, CRESA retains 9-1-1 records for six years from the date of the incident, after this retention period, these records are permanently deleted.

Your request is now considered withdrawn and closed.

[Quoted text hidden]

Exhibit O



Jeff Staples <jeffstapleslaw@gmail.com>

Fwd: Records Request :: W009588-051718

1 message

John Visser <john@investigativesolutions.us>
To: Jeff Staples <jeffstapleslaw@gmail.com>

Mon, Nov 9, 2020 at 12:01 PM

Hi Jeff,

Here is the CRESA email based on a request for Daryl Rogers 2010 reports.

Kindest regards,
Yvonne



JOHN D. VISSER

INVESTIGATIVE SOLUTIONS LLC

360.910.1190

9901 NE 7th Ave Suite B-235 VANCOUVER WA 98685

30 years of Investigative Experience

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Do not disseminate this email and destroy the original email and any copies.

----- Forwarded message -----

From: **CRESA 9-1-1** <cresa@mycusthelp.net>
Date: Thu, May 24, 2018 at 2:56 PM
Subject: Records Request :: W009588-051718
To: getthetruth@comcast.net <getthetruth@comcast.net>

--- Please respond above this line ---



05/24/2018

private investigator John Visser
10000 NE 7th Ave. Suite 360
Vancouver WA 98685

RE: PUBLIC RECORDS REQUEST of 5/17/2018, Reference # W009588-051718

Dear John,

CRESA received a public records request from you on 5/17/2018 related to the incident(s) located at: 2104 NE 98th Ave. Vancouver

Please note that since the incident(s) occurred more than six (6) years ago, there are no available records. In accordance with Washington State records retention guidelines, CRESA retains 9-1-1 records for six years from the date of the incident, after this retention period, these records are permanently deleted.

Your request is now considered withdrawn and closed.

Sincerely,
CRESA Administrative Services

To monitor the progress or update this request please log into the CRESA PUBLIC RECORDS SYSTEM.

Exhibit P


I, Jeffrey Staples, certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

I am an attorney licensed to practice law in the State of Washington. In my capacity as an attorney at law I represented Daryl Rogers in Clark County Cause Number 17-1-00097-3. This declaration is true and correct to the best of my knowledge.

As part of my representation of Mr. Rogers in this matter, I and my investigator attempted to obtain information regarding a 2010 incident that involved Mr. Rogers and the mother of the alleged victim in this matter where police were called. My investigator made a request to the regional 911 operator for any information it possessed, but we were informed that no records existed, as such records were only maintained for six years. We were also provided information from the prosecuting attorney's office indicating that they had made a similar request to the 911 operator and been informed there were no available records as well.

As part of my representation of Mr. Rogers in this matter, I requested discovery from the prosecuting attorney's office in writing. I believe, to the best of my recollection, that I also orally requested that the assigned prosecutor provide me any reports that were generated by police as part of the 2010 incident. My recollection is that no such reports were available and that none were provided to us.

SUBSCRIBED AND SWORN this 7th day of December, 2020 in Vancouver, Washington.



Jeffrey Staples, WSBA# 40738
Attorney at Law

Exhibit Q



follow-up on report info - DARYL ROGERS

Hayes, Colin <Colin.Hayes@clark.wa.gov>

Wed, Oct 31, 2018 at 4:43 PM

To: "Jeff Staples (jeffstapleslaw@gmail.com)" <jeffstapleslaw@gmail.com>

Det. Hernandez checked with dispatch and they no longer have records from 2010. She called dispatch to verify.

She checked EPR (the old report writing system) and it is not showing up in there. That is the system that was being used in 2010.

Detective Hernandez is not sure exactly what it was she saw back in 2016, but she is now sure it was not a police report since there no record of one in EPR. She thinks that she what she came across was some sort of dispatch call notes.

Regards,

Colin P. Hayes

Sr. Deputy Prosecuting Attorney

Clark County Prosecutor's Office

Children's Justice Center

601 W. Evergreen Blvd., Suite 101

P.O. Box 61992

Vancouver, WA 98666-5000

P: 360-397-6002

F: 360-759-6753

This e-mail and related attachments and any response may be subject to public disclosure under state law.

Exhibit R

GENERAL AFFIDAVIT

COMES NOW, DARYL ROGERS, resident of 191 CONSTANTINE WAY, ABERDEEN, WA 98520
County of GRAYS HARBOR, State of WASHINGTON and who
makes this his/her statement and General Affidavit upon oath and affirmation of
belief and personal knowledge that the following matters, facts and things set

forth are true and correct to the best of his/her knowledge:

On March 1, 2016 during an investigative interview that turned into Case No. 17-1-00097-3, I informed the two Detectives conducting the interview, Detective Monica Hernandez and Detective James Phelps, of the 2010 police incident between myself and the complaining witness' family. I also requested of the Detectives to find documentation of the 2010 police incident as it would prove the last date that I had any contact with the complaining witness Jazmyne Ogletree. This date is significant because it contradicts the complaining witness' statement that I sexually abused or had inappropriate contact (Rape or Child Molestation) with her for over a year. This date is further significant as it would also contradict Amanda Poindexter's (complaining witness' mother) testimony that their family lived with me and my family for 4-6 months. If the documentation of the 2010 police incident was produced, its date would have refuted the only two prosecution witnesses with relevant testimony of the time in question, the complaining witness and her mother Amanda Poindexter.

The missing documentation of the 2010 police incident and its date would validate my defense and impeach the complaining witness' testimony and in turn invalidated the prosecution's expert witnesses. Ms. Ogletree's statements regarding being sexually abused by me for over a year and the effects of this prolonged sexual abuse is the only basis for the testimony of the prosecutions expert witnesses. Therefore the missing documentation of the 2010 police incident and its date would impeach the complaining witness, which invalidates the prosecution's expert witnesses' testimony and validates my defense at trial.

My defense at trial was that (a) Ms. Ogletree and her family did not live with my family for a year or 4-6 months, but instead for a month and a half (it's to be noted that this month and a half includes the two week period leading up to the 2010 police incident, where the complaining witness and her family was out of the home and had no contact with me or my family. This is agreed upon by Amanda Poindexter the prosecution's witness.); (b) the short amount of time that I had contact with the complaining witness and her family in addition to 1. the amount of people living in the home (8 people that includes myself, Shatyrá Rogers - my sister, Demetrius Rogers - my brother, Montreal Douglas - my friend, Jazmyne Ogletree - complaining witness, Amanda Poindexter - complaining witness' mother, Xavier Owens - complaining witness' brother, and James Poindexter - complaining witness' brother) 2. the 760 ft² of available living space at 2104 NE 98th Avenue, Vancouver, WA 98664 (there was an additional 480 ft² of garage space used for storage and filled with boxes for a total of 1240 ft² and 3. the schedules of everyone in the home made it impossible for these crimes to have been committed; and (c) my family and the complaining witnesses family split on bad terms resulting in the 2010 police incident.

While preparing for trial I explained the significance of some type of documentation of the 2010 police incident and that the Detectives were informed of this in 2016 to my trial attorney, Jeff Staples. I requested Mr. Staples obtain documentation of this 2010 police incident from the prosecution. This documentation was never handed over to my trial attorney. I also made a separate request for these documents. Trial for this case began on Monday, October 29, 2018. Throughout the trial the 2010 police incident was mentioned in excess of 30 times by prosecution and defense witnesses, establishing the importance of this incident. But when this incident occurred was not agreed on and was in fact heavily in dispute. This further establishes the importance of any documentation that proves the date of this 2010 police incident. The existence of documentation of the 2010 police incident being obtained by Detective Hernandez in 2016 while investigating this case was not mentioned during Detective Hernandez' direct, cross, or rebuttal testimony at trial. Both the prosecution and defense rested its case around 4pm on Wednesday, October 31, 2018. An email acknowledging that Detective Hernandez had possession of documentation of the 2010 police incident in 2016 while investigating this case was sent to my trial attorney by the prosecuting attorney, Colin Hayes at 4:43 pm on Wednesday, October 31, 2018. I was never informed by my trial attorney that this email was sent by the prosecuting attorney. I was made aware of this email in late September 2020, after receiving my entire case file from my trial attorney.

This documentation of the 2010 police incident is the only impartial evidence gathered from the time in question (2010) and contains the last date that I had any contact with Ms. Ogletree or her family. All other evidence and/or testimony was gathered years later (2016) and is solely based on the complaining witnesses' statements. The documentation of the 2010 police incident and its date proves that I did not have contact with the complaining witness for a year, but instead for 6 weeks or less. If this documentation of the 2010 police incident was made available it would have 1. corroborated my trial testimony as well as the trial testimony of each defense witness; 2. contradicted the complaining witness' trial testimony; 3. invalidated expert witness testimony; and 4. validated my trial defense.

WITNESS my signature, this the 29 day of April, 2022.

DANIEL ROGERS

Signature of Affiant